

## Lawful Basis

The General Data Protection Regulations (GDPR) sets out conditions for lawful processing of personal data (Article 6) and further conditions for processing special categories of personal data (Article 9). These are similar to the conditions in Schedules 2 and 3 of the Data Protection Act 1998 (DPA98) with sensitive personal data now called 'special categories' of personal data. As personal data concerning health is one of the special categories, organisations that process such data must be able to demonstrate that they have met a condition in both Article 6 and Article 9 of the GDPR.

## Provision of Healthcare

The lawful basis for processing special category health data for direct care is that processing is: 'necessary... in the exercise of official authority vested in the controller' (Article 6(1)e). Additionally, sometimes 'processing is necessary for compliance with a legal obligation to which the controller is subject' (Article 6(1)c). For these bases, we need to demonstrate that we do have the official authority. This comes under a variety of legislation, including the following:

ORGANISATION (TYPE)	SOURCE OF 'OFFICIAL AUTHORITY'
NHS England	NHS Act 2006
Clinical Commissioning Groups	NHS Act 2006
NHS Digital	Health and Social Care Act 2012
GP Practices	NHS England's powers to commission health services under the NHS Act 2006 or to delegate such powers to CCGs.
NHS Trusts	National Health Service and Community Care Act 1990
NHS Foundation Trusts	Health and Social Care (Community Health and Standards) Act 2003
Local authorities	Local Government Act 1974 Children Act 1989 Children Act 2004 Care Act 2014

The special category condition for processing for direct care is that processing is: 'necessary for the purposes of preventative 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...' (Article 9(2)(h)).

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In addition to a GDPR Article 9 condition for processing, it is also necessary to identify an additional condition in Schedule 1 of the DPA 2018. For the provision of direct care the relevant condition is 'Health or social care purposes' (Schedule 1, Part 1 (2)).

Where there are concerns about public health, such as for notifiable diseases, then the lawful basis is for processing personal data is: 9(2)(j) '...necessary for reasons of public interest in the area of public health...or ensuring high standards of quality and safety of health care and of medicinal products or medical devices...'

For suspected or actual safeguarding issue we will share information that we hold with other relevant agencies whether or not the individual or their representative agrees. The purpose of the processing is to protect the child or vulnerable adult.

The lawful basis for processing personal information is: 6(1)(c) legal obligation and 9(2)(b) '...is necessary for the purposes of carrying out the obligations and exercising the specific rights of the controller or of the data subject in the field of ...social protection law in so far as it is authorised by Union or Member State law.'

Where there is a request for personal confidential data from an insurance company, solicitor, or employer (or similar third party) the lawful basis and lawful condition for processing will be explicit consent under both Articles 6(1)(a) and Article 9(1)(a).

Sometimes, we may rely on 6(1)f legitimate interests as a basis for processing carried out not in the performance of our official tasks, such as for system backup and recovery processes.

## Service Improvement

The purpose for implementing the above is to maintain and monitor the performance of our services and to constantly look to improve the site and the services it offers to our users. The lawful basis we rely on to process your personal data is either Article 6(1)(a) of the GDPR, for example when we require your consent for surveys, or Article 6(1)(f) which allows us to process personal data when it's necessary for our legitimate interests. You have the right to opt out of your data being processed for these purposes.

## Representation of Organisation

We process small amounts of data for those representing other organisations, such as partners organisations and suppliers. This will usually be limited to, for example, contact details, as is covered by Article 6(1)b whereby

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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.'

## Application and Employment

The lawful basis for processing data for job applications and employment is covered by Article 6(1)b whereby 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', and 6(1)c, 'processing is necessary for compliance with a legal obligation wo which the controller is subject'.

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