



GDPR legal bases for processing personal data



Controllers must have a lawful bases for processing personal data, under the GDPR and these are set out in Article 6.1 as follows:

A. CONSENT

The individual has given their Consent to the processing of their Personal Data.

B. CONTRACTUAL

Processing of Personal Data is necessary for the performance of a contract to which the individual is a party or for the Controller to take pre-contractual steps at the request of the

C. LEGAL OBLIGATION

Processing of Personal Data is necessary for compliance with a legal obligation to which the Controller is subject.

D. VITAL INTERERSTIS

Processing of Personal Data is necessary to protect the vital interest of the individual or of another individual.

E. PUBLIC TASK

Processing of Personal Data is necessary for the performance of a task carried out in the public interest or in the exercise of official authority.

F. LEGITIMATE INTERESTS

Processing is necessary under the Legitimate Interests of the Controller or Third Party, unless these interests are overridden by the individual's interests or fundamental rights.

Is consent the most important Lawful Basis for processing?

It is important to note that there is no hierarchy of Lawful Bases for processing Personal Data: all are equally valid. Controllers may choose a different Lawful Basis for different processing activities.

The most appropriate Lawful Basis will depend on the Personal Data being processed and the purposes for processing.

Legitimate Interests may be considered where:

A. Another Lawful Basis is not available due to the nature and/or scope of the proposed processing;

or

B. Where there are a number of Lawful Bases that could be used but Legitimate Interests is the most appropriate

Telling individuals about Lawful Basis of Processing

Under the GDPR, Controllers must be clear and transparent about which Lawful Basis they are using as;

A. Different Lawful Bases give rise to different obligations under the GDPR;

or

B. Controllers should record which Lawful Basis they are choosing for their different processing activities and their reasons for choosing that Lawful Basis

It is also important to note that, in addition to satisfying one of the Lawful Bases for processing Personal Data, Controllers must comply with the data protection.

Principles 2 in the GDPR Under the transparency provisions in the GDPR, Controllers must set out what their Legitimate Interests are when they rely on this as their Lawful Basis for processing.

Processing for secondary purposes

Recital 50 & Article 6(4)

If the purpose of the processing changes the Controller would need to evaluate and document whether the new purpose is compatible, taking into account;

- A. Another Lawful Basis is not available due to the nature and/or scope of the proposed processing;
- B. Where there are a number of Lawful Bases that could be used but Legitimate Interests is the most appropriate
- C. The nature of the Personal Data
- D. The possible consequences of the change of purpose on individuals
- E. The existence of appropriate safeguards, e.g. encryption or pseudonymisation