



Department  
of Health &  
Social Care

# **Special Categories of Personal Data Processing Policy**

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# 1. Introduction

The aim of this policy document is to set out how, within the provisions of applicable data protection law (specifically the Data Protection Act 2018 and the General Data Protection Regulation), the Department of Health & Social Care (DHSC) will seek to protect special category and criminal convictions personal data.

It meets the requirement at paragraph 1 of Schedule 1 of the Data Protection Act 2018, that an appropriate policy document be in place where the processing of special category personal data is necessary for the purposes of performing or exercising obligations or rights which are imposed or conferred by law on the controller or the data subject in connection with employment, social security or social protection.

It also meets the requirement at paragraph 5 of Schedule 1 of the Data Protection Act 2018 that an appropriate policy document be in place where the processing of special category personal data is necessary for reasons of substantial public interest. The specific conditions under which data may be processed for reasons of substantial public interest are set out at paragraphs 6 to 28 of Schedule 1 of the Data Protection Act 2018.

This policy should be read alongside the Department's Data Protection Policy and Privacy Statement, available on GOV.UK.

## 2. Purpose

The purpose of this policy is to explain:

1. DHSC procedures which are in place to secure compliance with the General Data Protection Regulation and data protection principles when relying on employment, social security and social protection conditions in Part 1 of Schedule 1, Data Protection Act 2018.
2. DHSC procedures which are in place to secure compliance with the General Data Protection Regulation data protection principles when relying on substantial public interest conditions in Part 2 of Schedule 1, Data Protection Act 2018; and
3. Retention and erasure policies concerning the processing of special categories of data on the grounds of employment and substantial public interest.

## 3. Procedures for securing compliance

Article 5 of the General Data Protection Regulation sets out the data protection principles. These are our procedures for ensuring that we comply with them:

### Principle 1

Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.

DHSC will:

- ensure that personal data is only processed where a lawful basis applies, and where processing is otherwise lawful
- only process personal data fairly, and will ensure that data subjects are not misled about the purposes of any processing
- ensure that data subjects receive full privacy information so that any processing of personal data is transparent, as well as being clear and easy to understand

### Principle 2

Personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes.

DHSC will:

- only collect personal data for specified, explicit and legitimate purposes, and we will inform data subjects what those purposes are in a data protection impact assessment
- not use personal data for purposes that are incompatible with the purposes for which it was collected. If we do use personal data for a new purpose that is compatible, we will inform the data subject first

### Principle 3

Personal data shall be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed.

DHSC will only collect the minimum personal data that we need for the purpose for which it is collected. We will ensure that the data we collect is adequate and relevant.

## **Principle 4**

Personal data shall be accurate and, where necessary, kept up to date.

DHSC will ensure that personal data is accurate, and kept up to date where necessary. We will take particular care to do this where our use of the personal data has a significant impact on individuals.

## **Principle 5**

Personal data shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed.

DHSC will only keep personal data in identifiable form for as long as is necessary for the purposes for which it is collected, or where we have a legal obligation to do so. Once we no longer need personal data, it shall be deleted or rendered permanently anonymous.

## **Principle 6**

Personal data shall be processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

DHSC will ensure that there appropriate organisational and technical measures in place to protect personal data.

## 4. Special categories of personal data overview

These are personal data deemed to be more sensitive by law, and so need additional protection. In addition to establishing an appropriate legal basis for the processing of personal data, special category data may only be processed where at least one further condition for processing is fulfilled. These conditions are:

1. The data subject has given explicit consent;
2. The processing is necessary in the context of employment law, or laws relating to social security and social protection;
3. The processing is necessary to protect vital interests of the data subject or of another natural person;
4. The processing is carried out in the course of the legitimate activities of a charity or not-for-profit body, with respect to its own members, former members, or persons with whom it has regular contact in connection with its purposes;
5. The processing relates to personal data which have been manifestly made public by the data subject;
6. The processing is necessary for the establishment, exercise or defence of legal claims, or for courts acting in their judicial capacity;
7. The processing is necessary for reasons of substantial public interest, and occurs on the basis of a law that is, inter alia, proportionate to the aim pursued and protects the rights of data subjects;
8. The processing is required for the purpose of medical treatment undertaken by health professionals, including assessing the working capacity of employees and the management of health or social care systems and services;
9. The processing is necessary for reasons of public interest in the area of public health (e.g., ensuring the safety of medicinal products);
10. The processing is necessary for archiving purposes in the public interest, for historical, scientific, research or statistical purposes, subject to appropriate safeguards.

Special categories of data consist of information which relates to -

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- a) the racial or ethnic origin of the data subject;
- b) their political opinions;
- c) their religious beliefs or other beliefs of a similar or philosophical nature;
- d) whether they are a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992);
- e) their physical or mental health;
- f) their sexual life or orientation;
- g) genetic/biometric data (where processed to uniquely identify an individual).

# 5. Conditions relating to the processing of special categories of personal data

Schedule 1 of the Data Protection Act 2018 establishes conditions that permit the processing of the special categories of personal data and criminal convictions data. The Schedule is split into four parts:

- Part 1 – Conditions relating to employment, health and research
- Part 2 – Substantial public interest conditions
- Part 3 – Additional conditions relating to criminal convictions
- Part 4 – Appropriate policy document and additional safeguards

Schedule 1 of the Data Protection Act 2018 establishes conditions that permit the processing of the special categories of personal data as follows:

- The processing of the special categories of personal data meets the requirements of Article 9(2) of the GDPR if it meets one of the conditions listed in Part 1 of Schedule 1;
- The processing of the special categories of personal data meets the requirement of Article 9(2) of the GDPR if it meets one of the conditions listed in Part 2 of Schedule 1;
- Processing meets the requirement in Article 10 of the GDPR if it meets one of the conditions listed in Part 1, 2 or 3 of Schedule 1.

## 6. Schedule 1 conditions that are relevant to DHSC

a) Schedule 1, Part 1 conditions for processing in connection with employment, health and research that are relevant to DHSC activity are:

- Employment, social security and social protection: Processing necessary for the purposes of performing or exercising obligations or rights of the controller or the data subject under employment law, social security law or the law relating to social protection.
- Health or social care: Processing necessary for health or social care purposes.

b) Schedule 1, Part 2 conditions for processing in the substantial public interest that are relevant to DHSC activity are:

- Statutory and government purposes: Processing necessary for the exercise of a function conferred on a person by enactment or the exercise of a function of the Crown, a Minister or a government department.
- Equality of opportunity or treatment: Processing necessary for identifying or keeping under review the existence or absence of equality of opportunity or treatment between groups of people with the view to enabling such equality to be promoted or maintained.

c) Schedule 1, Part 3 conditions for processing of criminal convictions data that is relevant to DHSC activity are:

- Consent: processing with the consent of the data subject.
- Extension of certain conditions under Schedule 1 part 2: allows processing of criminal convictions data where processing meets a condition in schedule 1 part 2 that meets the substantial interest test.

## **7. The processing of special category personal data by DHSC**

### **a) Race or ethnic origin, health, sexual orientation, trade union membership:**

- Purpose: Employment.
- Law: Employment Law.
- GDPR Article 6 (1) (b) contract, Article 9 (2) (b) for the purpose of employment, social security and social protection.
- Data Protection Bill Schedule 1 part 1, 1 condition: employment, social security and social protection.
- Retention period: current record retained as long as is necessary to comply with employment law.

### **b) Race or ethnic origin, health, sexual orientation:**

- Purpose: Equality and diversity.
- Law: Equality Act 2010 and associated regulations.
- GDPR Article 6 (1) (e) Public task, Article 9 (2) (g) substantial public interest.
- Data Protection Bill Schedule 1 part 2, 3 conditions: equality of opportunity or treatment.
- Retention period: current record retained as long as is necessary to comply with equality law.

### **c) Criminal Convictions:**

- Purpose: the processing of criminal convictions data where necessary for the purposes of performing or exercising employment law obligations or rights (criminal conviction disclosure certificate, criminal conviction declaration form at recruitment and selection) or consent has been granted to process the information.

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- Law: Employment Law and Data Protection Law.
- GDPR Article 6 (1) (b) contract, and Article 6 (1) (a) Consent, Article 9 (2) (b) for the purpose of employment, social security and social protection.
- Data Protection Bill Schedule 1 part 3, 1 condition: processing criminal convictions data with consent and/or the extension of certain conditions under schedule 1 part 2 processing in the substantial public interest.
- Retention period: current record retained as long as is necessary to comply with employment law.

Our official functions have a clear basis in law which are:

- Health and Social Care (Safety and Quality) Act 2015;
- Employment Act 2008 and associated regulations;
- Equality Act 2010 and associated regulations.

The purposes of the processing, where relevant, are

- Provision of public health;
- Employment for managing absence, reporting on health and safety, and recruitment monitoring or to enable the deducting and payment trade union membership fees;
- Equality and diversity monitoring.

## 8. DHSC policies regarding retention and erasure of personal data

We will ensure, where special category or criminal convictions personal data is processed, that:

- there is a record of that processing, and that record will set out, where possible, the envisaged time limits for erasure of the different categories of data;
- where we no longer require special category or criminal convictions personal data for the purpose for which it was collected, we will delete it or render it permanently anonymous;
- data subjects receive full privacy information about how their data will be handled, and that this will include the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period.

## 9. Address and contact details of our Data Protection Officer

The Department of Health and Social Care is the data controller for the Department itself and also joint data controller for its executive agencies (Public Health England and the Medical Healthcare Products Regulatory Authority).

The Data Protection Officer is Lee Cramp who can be contacted:

In writing at:

Department of Health and Social Care

1st Floor North

39 Victoria Street

London, SW1H 0EU

By email at:

[data\\_protection@dhsc.gov.uk](mailto:data_protection@dhsc.gov.uk)

## 9. Document History

Version	Issue Date	Changes
0.1	09/09/2018	Initial draft
0.2	09/09/2018	Reviewed by Team leader, Information and Security Team
0.3	10/09/2018	Reviewed by Data Protection Officer
1.0	23/10/2018	Document moved to accessible format for publication

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