

Appropriate Policy for processing sensitive personal information

Information about the legal basis and safeguards that Ofqual has put in place for sensitive processing, the processing of special categories of personal data and criminal convictions data

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Description of data processed

This document provides information about the legal basis and safeguards that Ofqual has put in place for sensitive processing, the processing of special categories of personal data and criminal convictions data. The Data Protection Act 2018 (DPA 2018) outlines the requirement for an appropriate policy document when processing special category data and criminal offence data under certain specified conditions. Almost all the substantial public interest conditions in Schedule 1 part 2 of the DPA 2018 require an appropriate policy document to be in place to demonstrate compliance with the requirements of Article 5 UK GDPR.¹

As part of Ofqual's statutory and corporate functions, we process special category data and criminal offence data in accordance with the requirements of Article 9 and 10 of the UK GDPR and Schedule 1 of the Data Protection act 2018. More information about our processing of this data [can be found in our Personal Data Protection Policy](#). In summary, we process the following categories of data about our employees, and prospective employees, in order to fulfil our obligations as an employer. We also process this data, for reasons of substantial public interest, in order to perform our statutory regulatory role.

Special category data is defined as data revealing or concerning:

- physical or mental health details
- racial or ethnic origin
- religious or other beliefs
- political opinions, sexual life, sexual orientation
- trade union membership
- biometric data (as part of our data security measures some of our employees are equipped with devices which use biometric scanners to identify registered users. Ofqual does not otherwise process this category of data)
- genetic data

Criminal offence data is defined as data revealing or concerning:

- offences (including alleged offences)
- criminal proceedings, outcomes and sentences (regulated qualifications, including allegations of fraud and malpractice; relevant criminal convictions related to staff)

¹ From 1st January 2021, the EU GDPR no longer applies to the UK. The UK has retained the EU GDPR under Section 3 of the European Union (Withdrawal) Act 2018 (EUWA). It has been renamed as the UK GDPR and tailored by the Data Protection Act 2018. From 1st January 2021, the UK data protection regime consists of the UK GDPR as incorporated under the EUWA and amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (DPPEC) and the Data protection Act 2018 as enacted in May 2018 and amended by the DPPEC Regulations.

Conditions for processing special category data and criminal offence data

We process special categories of data under the following UK GDPR Articles:

- Article 9(2)(b) – where processing is necessary for the purposes of performing or exercising obligations or rights which are imposed or conferred by law or in connection with employment, social security or social protection
- Article 9(2)(g) – reasons of substantial public interest
In performing its role as a qualification’s regulator, Ofqual processes personal data in this context for the purposes of substantial public interest and this processing is necessary for carrying out its role
- Article 9(2)(j) – archiving, research and statistics
Ofqual is permitted to carry out programmes of research and development connected with qualifications or regulated assessments². Personal data is processed under this condition in accordance with Article 89(1) UK GDPR
- Article 9(2)(f) – for the establishment, exercise or defence of legal claims
- Article 9(2)(a) – explicit consent
- Article 9(2)(c) – where processing is necessary to protect the vital interests of the data subject or another natural person

We process criminal offence data in accordance with Article 10 UK GDPR

Schedule 1 condition for processing

Schedule 1 of the DPA 2018 identifies that in order to rely on certain conditions for processing data, an appropriate policy document must be in place. We process personal data for the following purposes:

- the processing 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 (Sch 1, Part 1, Paragraph 1)
- the processing is necessary for reasons of substantial public interest (Sch 1, Part 2)
- the processing is necessary for statutory or government purposes (Sch 1, Part 2, Paragraph 6)
- the processing is necessary for racial and ethnic diversity at senior levels of organisations (Sch 1, Part 2, Paragraph 9)

² Section 169 Apprenticeships, Skills, Children and Learning Act 2009

- the processing is necessary for the purposes of preventing and detecting unlawful acts (Sch 1, Part 2, Paragraph 10)
- the processing is necessary for the purposes of protecting the public against dishonesty (Sch 1, Part 2, Paragraph 11)
- the processing is necessary for the purposes of research and/or statistical purposes (carried out in accordance with Article 89(1) UK GDPR and is in the public interest) (Sch 1, Part 1, Paragraph 4)
- the processing is necessary for the purposes of equality of opportunity or treatment in identifying or keeping under review the existence or absence of equality of opportunity or treatment between groups of people specified in relation to that category with a view to enabling such equality to be promoted or maintained (Sch 1, Part 2, Paragraph 8)
- the processing is necessary for the purposes of complying with a regulatory requirement which involves taking steps to establish whether another person has committed an unlawful act, or been involved in dishonesty, malpractice or other seriously improper conduct (Sch 1, Part 2, Paragraph 12)
- the processing consists of the disclosure of personal data to an elected representative or a person acting with the authority of such a representative, and in response to a communication to the controller from that representative or person which was made in response to a request from an individual (Sch 1, Part 2, Paragraph 24)
- the processing is necessary for the purposes of obtaining legal advice, establishing, exercising or defending legal rights or in connection with, any legal proceedings (including prospective legal proceedings) (Sch 1, Part 3, Paragraph 33)

Procedures for ensuring compliance with the principles

Accountability principle

- we maintain documentation of our processing activities
- we adopt and implement data protection policies and have written contracts in place with data processors. We also implement information sharing agreements with other data controllers where appropriate
- we routinely carry out data protection impact assessments
- we implement appropriate security measures in relation to the personal data we process
- we adopt a 'data protection by design and default' approach
- we have appointed a data protection officer who reports to our highest management level

Principle (a): lawfulness, fairness and transparency

We provide clear and transparent information about why we process personal data including our lawful basis for processing in our privacy notices, policy documents which we make publicly available (including this policy document).

Our processing for purposes of substantial public interest is necessary for the exercise of a function conferred on Ofqual by the legislation for which we act as a regulator; namely the Apprenticeships, Skills, Children and Learning Act 2009.

Our processing for the purposes of employment relates to our obligations as an employer.

We also process special category personal data to comply with other obligations imposed on Ofqual in its capacity as a public authority e.g. the Equality Act.

Principle (b): purpose limitation

We process personal data for purposes of substantial public interest when the processing is necessary for us to fulfil our statutory functions, where it is necessary for complying with or assisting another to comply with a regulatory requirement to establish whether an unlawful or improper conduct has occurred, to protect the public from dishonesty, preventing or detecting unlawful acts or for disclosure to elected representatives.

We are authorised by law to process personal data for these purposes. We may process personal data collected for any one of these purposes (whether by us or another controller), for any of the other purposes here, providing the processing is necessary and proportionate to that purpose.

If we are sharing data with another controller, we will document that they are authorised by law to process the data for their purpose.

We will not process personal data for purposes incompatible with the original purpose it was collected for.

Principle (c): data minimisation

We collect personal data necessary for the relevant purposes and ensure it is not excessive. The information we process is necessary for and proportionate to our purposes. Where personal data is provided to us or obtained by us, but is not relevant to our stated purposes, we will erase it in line with our retention schedule.

Principle (d): accuracy

Where we become aware that personal data is inaccurate or out of date, having regard to the purpose for which it is being processed, we will take every reasonable step to ensure that data is erased or rectified without delay. If we decide not to either erase or rectify it, for example because the lawful basis we rely on to process the data means these rights don't apply, we will document our decision.

Principle (e): storage limitation

All special category data processed by us for the purpose of employment or substantial public interest is, unless retained longer for archiving purposes, retained for the periods set out in our retention schedule. We determine the retention period for this data based on our legal obligations and the necessity of its retention for our business needs. Our retention schedule is reviewed regularly and updated when necessary.

Principle (f): integrity and confidentiality (security)

Electronic information is processed within our secure network. Hard copy information is processed in line with our security procedures.

Our electronic systems and physical storage have appropriate access controls applied. The systems we use to process personal data allow us to erase or update personal data at any point in time where appropriate.

Retention and erasure policies

Our retention and erasure practices are set out in our retention schedules.

APD review date

The policy will be reviewed on an annual basis (or more regularly if circumstances require it) and updated as necessary at these reviews.

This policy will be retained for as long as we process these categories of data, and for six months after processing ceases.



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