

# Personal Data Protection Policy

How and why Ofqual processes your personal data

**ofqual**

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## Scope and purpose of this policy

The Office of Qualification and Examinations Regulation (Ofqual) is committed to a policy of protecting the rights and privacy of individuals, staff and others in accordance with Data Protection Legislation<sup>1</sup>. This policy applies to all personal data processed by Ofqual.

This includes processing relating to:

- Ofqual staff
- individuals external to Ofqual – for example, when a person contacts Ofqual Public Enquiries, when a person applies for a job at Ofqual, when an organisation provides Ofqual with a service, and data relating to examinations

All personal data must be handled and dealt with appropriately however it is collected, recorded and used, and whether it is on paper, in electronic records or recorded in other formats, on other media, or by any other means.

It includes information held on computers (including email), paper files, photographs, audio recordings and CCTV images.

The purpose of this policy is to help you understand what personal data Ofqual collects, why we collect it and what we do with it. It will also help you to identify what your rights are and who you can contact for more information, to exercise your rights or to make a complaint.

## Personal data and special categories of personal data

This policy applies to personal data as defined by the Data Protection Act 2018 and the General Data Protection Regulation (UK GDPR)<sup>2</sup>; that is, any information relating to an identified or identifiable living person. It will cover information which on its own

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<sup>1</sup> From 1<sup>st</sup> January 2021, the law relating to data processing in the UK changed. Any processing of data prior to 1<sup>st</sup> January 2021 has been undertaken in accordance with EU General Data Protection Regulation (EU) 2016/679 (“the EU GDPR”). From 1<sup>st</sup> 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 1<sup>st</sup> 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.

<sup>2</sup> Article 4 of the UK GDPR

does not identify someone but which would identify them if put together with other information.

The UK GDPR extends the definition of personal data to include identification numbers, such as Unique Candidate Identifier (UCI). Personal data may include an individual's IP address and social media name.

This policy also applies to special categories of personal data<sup>3</sup>. Special category personal data is data that is particularly sensitive and therefore merits specific protection. The special categories of personal data specifically include data relating to an individual's:

- racial or ethnic group
- political opinions
- religious or philosophical beliefs
- trade union membership
- genetic data and/or biometric data
- health
- sexual orientation

This policy also applies to criminal offence data<sup>4</sup> to the limited extent such data is processed by Ofqual.

All personal data within Ofqual's control shall be identified as personal data, special category personal data or criminal offence data to ensure that it is handled in compliance with legal requirements and processing does not breach the rights of the individuals to whom it relates.

## Personal data processed by Ofqual

Ofqual collects personal data from a variety of sources. This can range from personal data given to us directly when you contact us, personal data we receive in the course of regulating awarding organisations to personal data used for HR purposes.

We process personal data relating to:

- employees, including contractors
- job applicants

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<sup>3</sup> As defined by Article 9(1) of the UK GDPR

<sup>4</sup> Article 10 of the UK GDPR

- external experts, consultants and advisers
- awarding organisation staff
- suppliers and service providers
- candidates (i.e. individuals registered to take regulated qualifications examinations)
- individuals who make enquiries, complainants and their representatives (including whistleblowers, freedom of information applications)
- personal data of those subject to a complaint
- respondents and their responses to consultations and surveys
- journalists and the media
- lobbyists
- research participants
- event or conference attendees
- teachers and headteachers
- individuals captured by CCTV
- other stakeholders (such as individuals in other government departments)

## Examples of personal data processed by Ofqual

We process the following examples of personal data:

- names of individuals
- candidate numbers (e.g. Unique Candidate Identifier/UCI)
- contact information (for example postal address, telephone number, email address)
- information in relation to activities, opinions and complaints in respect of regulated qualifications
- occupation or job title
- places of work
- information about an individual's education and qualifications
- information about an individual's skills and expertise
- other information relevant to our HR function
- images captured on CCTV
- photographs and visual images

## Examples of special category personal data processed by Ofqual

We may also process the following forms of special category personal data:

- physical or health details
- racial or ethnic origin

- religious or other beliefs
- political opinions
- sexual life
- trade union membership

## Criminal offence data

Ofqual may process personal data relating to the commission or alleged commission of a criminal offence by an individual and relating to legal proceedings, outcomes and sentences or convictions in respect of such offences to the extent that such matters are relevant to Ofqual's functions. For example, we may process criminal convictions data where it is necessary for us to do so as an employer, or where such data is relevant to the exercise of our role as the regulator of qualifications (for example in circumstances where an individual has infringed Ofqual's intellectual property or where there has been alleged qualification fraud).

More information about how Ofqual processes criminal and special category data is available in our [Appropriate Policy Document](#).

## Why we process personal data and our legal basis for processing

We process the above information to carry out one or more of the following activities:

- carry out our statutory functions:
  - we're responsible for making sure that regulated qualifications reliably indicate the knowledge, skills and understanding students have demonstrated; assessments and exams show what a student has achieved; people have confidence in the qualifications that we regulate; students and teachers have information on the full range of qualifications that we regulate
- comply with contractual obligations
- recognise awarding organisations for the purposes of providing regulated qualifications
- maintain a register of regulated qualifications and awarding organisations
- consideration and investigation of complaints of maladministration and/or malpractice in the creation, delivery or award of regulated qualifications
- conduct investigations of recognised awarding organisations and qualifications, for the purposes of considering compliance with Ofqual's regulatory requirements
- to perform our role in keeping arrangements in respect of National Curriculum Assessments under review
- to take enforcement action against an awarding organisation (for example we

- might direct an awarding organisation to take certain actions)
- carry out research<sup>5</sup>
- understand people's views and opinions (for example for policy purposes through consultations relating to regulated qualifications)
- to improve our services
- support and manage our employees and contractors
- Carry out administrative functions (for example HR, finance or procurement)
- maintain our own records and accounts
- provide or obtain professional advice
- send you information that we think might be of interest to you, if you have given us your consent to do so (such as if you sign up to receive our newsletters)
- comply with any legal and regulatory obligations Ofqual is subject to
- use of CCTV for crime prevention

The UK GDPR lists six lawful reasons for processing personal data<sup>6</sup>. The processing of personal data can only take place if at least one of the conditions applies.

In most circumstances, Ofqual's legal basis for processing the personal data for the listed activities are Articles 6(1)(a), (b) and (e). These are:

- Article 6(1)(a) - The data subject has given consent to the processing (consent has to be specific, informed, freely given and unambiguous). Where you have given your consent to the processing, you should be informed that you have the right to withdraw consent at any time. Your consent must be as easy to withdraw as to give
- Article 6(1)(b) - 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
- Article 6(1)(e) - Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller
- the processing of special categories of personal data is only permitted where special conditions apply. Further conditions apply when processing special categories of personal data<sup>7</sup>. In most circumstances, Ofqual's legal basis for

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<sup>5</sup> Some examples of research carried out by Ofqual can be seen on the Ofqual website at <https://www.gov.uk/Ofqual>

<sup>6</sup> See Article 6 of the UK GDPR

<sup>7</sup> Relevant conditions are contained in Article 9 UK GDPR and Schedule 1 to the Data Protection Act. 2018.

processing special category personal data is covered by Articles:

- Article 9(2)(b) – processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject.

Processing under this condition would include the information we process for recording staff sickness absences.

- Article 9(2)(g) – processing is necessary for reasons of substantial public interest...which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and interest of the data subject.

Ofqual is the regulator for qualifications, examinations and assessments in England and carries out its regulatory functions in the public interest. Examples of data we may process under this condition include data relation to the awarding of special consideration or reasonable adjustments for examinations. Our processing of personal data in this context is for the purpose of substantial public interest and is necessary for the carrying out of our role.

- Article 9(2)(a) – the data subject has given explicit consent to the processing of those personal data.

Circumstances in which Ofqual might rely on consent include where we process information about dietary requirements, or to enable us to make reasonable adjustments so that individuals can access our services.

- Article 9(2)(c) – processing is necessary to protect the vital interests of the data subject or of another natural person.

This would include circumstances where we might disclose medical information about an employee in an emergency.



# Data protection principles and how we process your personal data

Ofqual will process your personal data in accordance with the data protection principles which are set out in Article 5 of the UK GDPR. This means personal data will:

- a) be processed lawfully, fairly and in a transparent manner
- b) be collected for specified, explicit and legitimate purposes and not processed further in a manner that is incompatible with those purposes
- c) be adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed
- d) be accurate and where necessary, kept up to date (we will take every reasonable step to ensure that inaccurate personal data is corrected or erased without delay)
- e) be kept in a form that does not enable identification of the person(s) for longer than necessary; we may store personal data for longer periods if it is processed solely for archiving purposes (in the public interest), scientific or historical research or statistical purposes
- f) be processed in a way that ensures appropriate security of the personal data including protection from unauthorised or unlawful processing and from accidental loss, damage or destruction, using appropriate technical or organisational measures

Ofqual, as data controller, is responsible for, and must be able to demonstrate compliance with these principles. We follow procedures to ensure that all employees, contractors, agents, consultants and other parties who have access to any personal data held by or on behalf of us are fully aware of, and abide by, their duties and responsibilities under data protection legislation.

All Ofqual staff are required to respect the personal data and privacy of others and must ensure that appropriate protection and security measures are taken against

unlawful or unauthorised processing of personal data, and against the accidental loss of, or damage to personal data.

Some of the ways in which Ofqual protects personal data include:

- having a dedicated person with specific responsibility for data protection in Ofqual
- provide annual awareness training to employees in the handling of personal data
- Ofqual staff only have access to the personal data they need to in order to carry out their duties
- each information asset owner has a trained person which they report to and ensure
- reviews and audits are carried out which consider the way personal data is managed and accessed
- appropriate technical and organisational measures are in place to protect the confidentiality, integrity and availability of information
- on-going continuous review of security and cyber risks
- use of Data Protection Impact Assessments (DPIAs) to ensure privacy issues are considered from the outset
- data management plans are put in place for DPIA's with a set of controls that apply to specific data sets which we wish to control
- regular review of Ofqual information assurance and security policies and procedures
- on-going maintenance of records and logs of processing activity (eg information asset register, personal data register, security incident log, information sharing logs, risk register)
- retention schedules which state how long we will retain types of personal data
- on-going training and awareness for staff on information assurance and security
- use of the government Supplier Assurance Framework and Crown Commercial Services frameworks when working with suppliers and third parties
- annual assessment of Ofqual's compliance with the HMG Security Policy Framework, pan-government baseline security standards, the PSN Code of Connection
- annual IT Health Checks and penetration testing

# Sharing your personal data

We will not disclose personal data to any third party, unless we have a lawful basis for doing so. Confidentiality will be respected, where appropriate.

We sometimes need to share personal data with third parties. This is generally to enable us to undertake our statutory functions, to regulate effectively and/or to comply with our legal or regulatory obligations.

Where appropriate we share information with the following categories of third parties:

- other government departments and public authorities
- the Parliamentary Ombudsman and regulatory authorities such as other qualification regulators
- awarding organisations
- family, associates and representatives of the person whose personal data we are processing
- professional advisers and consultants
- suppliers and services providers
- credit reference agencies
- current, past or prospective employers
- financial organisations
- organisations subject to a complaint
- police forces
- prosecuting authorities and courts
- personnel vetting agencies (eg Disclosure & Barring Service and UK Secure Vetting)

For example, we may need to share personal data with third parties in order to investigate and respond to correspondence we receive from you, such as complaints, allegations of malpractice and from whistleblowers relating to awarding organisations and regulated qualifications.

When collecting your personal data, Ofqual will let you know how your personal data will be shared through appropriate privacy notices and relevant policies (eg Ofqual's whistleblowing policy and complaints procedure).

If processing is undertaken by a third party on behalf of Ofqual (by a "data processor"), you should also refer to their websites for details of their privacy notices. Where Ofqual uses a data processor it ensures that the processor has in place appropriate technical and organisational measures which comply with the UK GDPR and protect the rights of data subjects. Any processing by a data processor is governed by a contract (or other legal act) in compliance with Article 28(3) UK GDPR.

In certain circumstances, information relating to employees acting in a business

capacity may be made available provided:

- we have the statutory power or are required by law to do so; or
- the information is clearly not intrusive in nature; or
- the employee has consented to the disclosure; or
- the information is in a form that does not identify individual employees

## Your rights

### Access to your personal data

Under Article 15 of the UK GDPR<sup>8</sup>, you are entitled to ask for a copy of the personal data that is held about you – this is called a Data Subject Access Request (DSAR). When you submit a request for your personal data, you are entitled to:

- confirmation as to whether or not personal data concerning you are being processed, and, where that is the case, access to the personal data and the following information:
  - know why we have processed your personal data – the reason(s) and purpose(s) for the processing
  - the categories of personal data concerned
  - know if we have shared or will share your personal data and if so, with whom and for what purpose(s). In particular with recipients in third countries and international organisations
  - where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period
  - a copy of the personal data undergoing processing
  - the existence of the right to request for rectification or erasure of personal data or restriction of processing of personal data concerning you or to object to such processing
  - where the personal data are not collected from you, any available information as to their source
  - complain to the information commissioner's office (ICO)<sup>9</sup>

### Other rights<sup>10</sup>

In addition to the right to access your personal data (detailed above), you have the

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<sup>8</sup> See Article 15 of the UK GDPR for the full list of subject access rights.

<sup>9</sup> ICO <https://ico.org.uk/>

<sup>10</sup> Individual rights are subject to certain conditions – see GDPR, Articles – 20

following rights in relation to your personal data:

- right to rectification – you can ask Ofqual to rectify any inaccuracies in your personal data and receive notification that this has been done; this includes processing carried out on our behalf by third parties
- right to erasure – you can ask Ofqual to erase, delete or destroy any personal data we process concerning you
- right to restrict processing – you can ask Ofqual to restrict certain personal data we process about you
- where any rectification, erasure of personal data or restriction of processing is carried out in accordance with the above, Ofqual shall communicate any rectification, erasure of personal data or restriction of processing to each recipient to whom the personal data have been disclosed, unless this proves impossible or involves disproportionate effort. You are entitled to be informed about those recipients upon request
- right to data portability – you have the right to receive personal data held in a structured, commonly used, machine readable format (Ofqual does not typically or routinely process this form of data)
- right to object to automatic decision-making and profiling (Ofqual does not undertake this form of processing)

For detailed information regarding your rights, please refer to the Information Commissioner's Office (ICO) website at <https://ico.org.uk/for-the-public/>. You can also contact Ofqual's Data Protection Officer (contact details are given below).

## Data Protection Officer (DPO)

In accordance with Article 37 of the UK GDPR, Ofqual has appointed a Data Protection Officer (DPO). The DPO is a data protection subject matter expert who is responsible for advising Ofqual on its legal obligations, monitoring compliance with the GDPR and advising on Data Protection Impact Assessments (DPIAs).

Ofqual's DPO and can be contacted in writing via the email and postal address given below (see Requests regarding your personal data).

## Making a complaint

If you feel that Ofqual has not complied with this policy or in accordance with the UK GDPR or other data protection legislation, please contact the DPO in the first instance. You can also make a complaint via our [complaints procedure](#).

You also have the right to make a complaint to the Information Commissioner's Office (ICO) <https://ico.org.uk/>. The ICO is the UK's independent body set up to uphold information rights in the public interest.

## Requests regarding your personal data and for more information

For more information or any request regarding your personal data (e.g. rights of access, for rectification, erasure, restriction), please submit your request in writing to Ofqual's Data Protection Officer, either by:

- **email to –**  
[dp.requests@ofqual.gov.uk](mailto:dp.requests@ofqual.gov.uk)
  
- **post to –**  
Data Protection Officer  
  
Ofqual  
Floor 2  
1 Friargate  
Station Street  
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