

CORPORATE POLICY

Policy on Processing Special Category Personal Data (Appropriate Policy Document)

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

The logo for Ofqual, featuring the word "ofqual" in a bold, lowercase, sans-serif font. The letters "of" and "qual" are underlined with thick black lines. The logo is positioned in the bottom left corner of the page, which has a large orange triangular background element extending from the bottom left corner towards the top right.

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Scope and description of data processed

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.

This document outlines the legal basis and safeguards that Ofqual has put in place for the processing of special categories of personal data and criminal convictions data.

Almost all the substantial public interest conditions in Schedule 1 part 2 of the DPA 2018, along with the conditions for processing employment, social security and social protection data, require an appropriate policy document to demonstrate compliance with the principles of Article 5 of the UK GDPR¹

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 DPA 2018. More information about our processing of this data can be found in our Personal Data Protection Policy².

In summary, Ofqual processes the following categories of personal data about our employees, and prospective employees, to fulfil our obligations as an employer. We may also process this data about other individuals, where necessary for reasons of substantial public interest, 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 UK General Data Protection Regulation (UK GDPR).

² Accessible at: <https://www.gov.uk/government/organisations/ofqual/about/personal-information-charter>

Conditions for processing special category data and criminal offence data

Ofqual processes special categories of personal 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.
An example of our processing would include managing staff sickness absences.
- Article 9(2)(g) – reasons of substantial public interest
In performing its role as a qualifications 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.
Examples of our processing include the information we seek or receive as part of investigating a complaint.
- Article 9(2)(j) – archiving, research and statistics
Ofqual is permitted to carry out programmes of research and development connected with qualifications or regulated assessments³. 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
Examples of our processing include processing relating to any employment tribunal or other litigation.
- Article 9(2)(a) – explicit consent
Examples of our processing include staff and attendee dietary requirements and health information we receive from those individuals who require a reasonable adjustment to access our events or services.
- Article 9(2)(c) – where processing is necessary to protect the vital interests of the data subject or another natural person.
An example of our processing would be using health information about a member of staff in a medical emergency.
- We process criminal offence data in accordance with Article 10 of the UK GDPR. Examples of our processing of criminal offence data include pre-employment checks and declarations by an employee in line with contractual obligations.

³ Section 169 Apprenticeships, Skills, Children and Learning Act 2009

Schedule 1 condition for processing

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

- 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)
- for reasons of substantial public interest (Sch 1, Part 2)
- for statutory or government purposes (Sch 1, Part 2, Paragraph 6)
- for racial and ethnic diversity at senior levels of organisations (Sch 1, Part 2, Paragraph 9)
- for preventing and detecting unlawful acts (Sch 1, Part 2, Paragraph 10)
- for protecting the public against dishonesty (Sch 1, Part 2, Paragraph 11)
- for 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)
- for 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)
- for 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)
- for 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)
- for 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 (DPIAs)
- 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, and 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 stored and managed within Ofqual's secure network, while hard copy information is handled in accordance with our physical security procedures.

Both electronic systems and physical storage locations are protected by appropriate access controls to ensure that only authorised personnel can access personal data.

Our systems support the secure updating or erasure of personal data, where appropriate, in line with data protection requirements and individual rights.

Retention and erasure policies

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

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.

Document Control

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Revision history

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0.1	10/02/2021	January 2021 – updates to reflect changes following exit from European Union
0.2	12/08/2025	August 2025 – minor amends to wording, examples added and legal references in footers. Name of policy updated for clarity.



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