

# General Data Protection Regulation

## Relying on Consent

**Maureen H Falconer**  
Regional Manager – Scotland  
Information Commissioner's Office



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# Conditions for processing

## Personal data

- Consent
- Contract with the individual
- Comply with a legal obligation
- Protecting vital interests
- Public function in the public interest
- Exercise of official authority
- (Legitimate interests of the data controller, but not prejudicial to the person)

## Special Category data

- Explicit consent
- Employment, social security, social protection law
- Vital interests
- Not for profit religious, political or trade union bodies
- Put in public domain by the person
- Legal proceedings/advice
- Substantial public interest based on law
- Health, medical, social care
- Public health
- Archiving, research, statistical purposes

***Additional conditions likely to be in the new UK DP Bill***

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# Consent: what's new?

- It must be an unambiguous, clear and affirmative action
- No pre-ticked opt-in boxes
- It must be granular for individual consent options
- It must be separate from the Ts & Cs
- It shouldn't be a precondition of receiving a service
- Consent must be demonstrated
- Consent may be withdrawn as easily as giving
- There should be no imbalance of power

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# Consent: why it's important?

- It legitimises use of special category data
- It provides the basis for exercising certain rights
- It promotes control
- It builds trust and confidence
- It can enhance your reputation

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# Consent: when is it appropriate?

- When it's not difficult to obtain!
- When there is real, meaningful choice
- When you want to build trust
- When it's not a precondition of a service
- When there is no power imbalance

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# Consent: when is it valid?

- When it's fully informed
- When it's freely given with on-going choice and control
- When it's a positive action
- When it's unbundled from other terms and conditions
- When it's concise and easy to understand

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# What's not consent?

- ✗ Relying on silence, pre-ticked boxes or inactivity;
- ✗ Having no genuine or free choice or being unable to refuse or withdraw without detriment;
- ✗ In any specific case, having an imbalance between the person and the controller, especially where the controller is a public authority and it's unlikely for consent to have been freely given in all the circumstances of that case;
- ✗ Not allowing separate consent to be given to different processing despite it being appropriate in any individual case; or
- ✗ Making the performance of a contract dependent on consent when it's not necessary for such performance.

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# What's the issue for PAs?

Recital 43:

There is a potentially inherent imbalance of power between individuals and public authorities in respect of police, health, social work and education, depending on the circumstances of any particular case.

Para 95 of the Supreme Court Judgment:

'Nevertheless, there must be a risk that, in an individual case, parents will be given the impression that they must accept the advice or services which they are offered, especially in pursuance of a child's plan for targeted intervention...'



# Keep in touch

ICO Scotland

45 Melville Street

Edinburgh EH3 7HL

T: 0303 123 1115 E: [Scotland@ico.org.uk](mailto:Scotland@ico.org.uk)

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