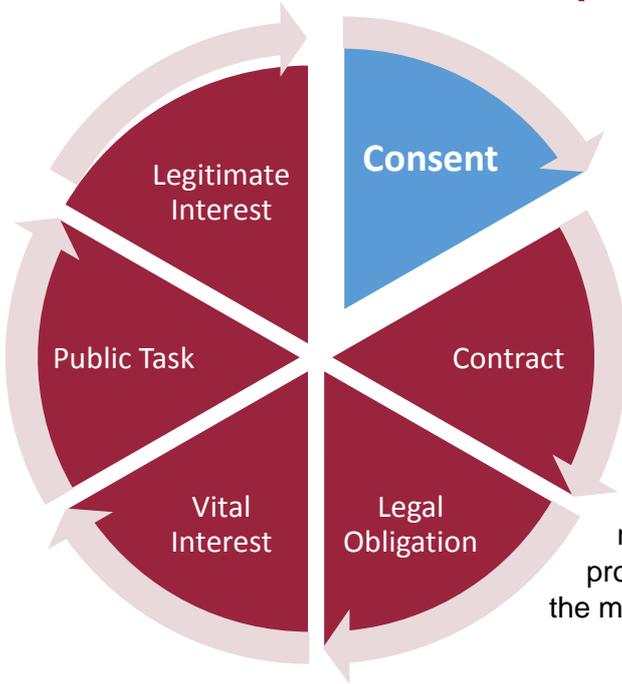




GDPR and Consent (GUIDANCE FOR ALL STAFF)



Consent and lawful basis

Consent is one of the lawful bases for processing personal data under new data protection legislation. Explicit consent is also one of the ten additional conditions for the processing of Special Category Data (formerly called sensitive personal data).

Consent is not a new concept, however the GDPR expands and clarifies the definition of consent in several ways which will impact on the University.

Consent under the GDPR gives individuals stronger rights and therefore may no longer be the best basis for processing. It is anticipated that consent will only be used in the minority of cases where data is collected.

What is new with consent?

As before, consent needs to be freely given, specific, informed and with an indication of agreement. In addition, GDPR now states that consent should be **unambiguous**, and involve a **clear affirmative action** on the part of the individual.

When is it appropriate to use consent as a lawful basis?

Consent may be used in cases where there is no other appropriate lawful basis for processing individual's data. This may include instances where the collection of data is purely voluntary. Examples might include consenting to be photographed or consenting to be on a mailing list to receive information about events.

If you feel that the management of information (and associated individual's rights) under the lawful basis of consent will be difficult to implement you should consider another lawful basis. Further information can be found in our [Quick Guide on Lawful Basis](#).

Documenting consent and transparency

Consent forms are an important way of documenting consent. These should clearly outline how an individual's data will be used. It is also advisable to link these to privacy notices which will provide additional information on the processing of information including the data controller and any data sharing implications. For more information see our [Quick Guide on Privacy Notices](#).



Things to consider with consent?

Consideration	Explanation	Additional Information
Unbundled	Consent should be separate from other terms and conditions.	Consent should not be a prerequisite for signing up for a service.
Active opt-in	There must be a clear and unambiguous positive statement from an individual that they consent.	The use of pre-ticked opt-in boxes, or opt-out boxes will no longer be valid.
Granular	Wherever possible you should give granular options to consent to different types of processing rather than bundling them together.	This would be used in cases where you may use data for a variety of purposes.
Record keeping	You need to ensure that records are kept of consent. This should include: what the individual consented to; what they were told; and how and when they consented.	Records of consent must be kept for the duration of the data processing.
How long does consent last?	Consent will likely degrade over time but how long it lasts will depend on the context. You need to consider the scope of the original request, the individual's expectation. If your data processing changes you will need to refresh consent.	Always ask the question: is the processing we're doing still what the individual consented to?
Easy to withdraw	Individuals have the right to withdraw their consent at any time. Therefore, you need to make it clear how they can do this. You will need to ensure you have processes in place to manage the withdrawal of consent.	This includes mechanisms to stop processing the data as soon as a request is made.
Capacity to consent	You should generally assume adults have the capacity to consent unless you have reason to believe the contrary.	You should ensure any information is provided in a transparent, concise, intelligible and accessible format and language.
Children's consent	For services delivered via the internet the age of consent in the GDPR is currently 16 but the UK Data Protection Bill proposes an age of consent of 13. For other activities there is no definitive age of consent.	The general rule in the UK is that you should consider if the individual child has the capacity to consent on a case by case basis.
Consent and research	The GDPR acknowledges that it isn't always possible to fully identify the purposes of processing personal data for scientific research at the time the data is collected, and specifies that data subjects should be allowed to consent to general areas of research.	Ideally you should provide granular options to allow data subjects as much choice as you are able to.
Explicit Consent	Where consent is being used as a legal basis for the processing of special category data (including; ethnicity, health, sexual orientation, religious, political and philosophical beliefs, trade union membership, genetic or biometric data) then the GDPR states that such consent should be explicit. As all consent under the GDPR should be explicit this should not be manifestly different than the consent for non-Special Category Data	It is recommended that you should take extra care to ensure that consent is specific and unambiguous in exactly what individuals are agreeing to because of the nature of the personal data involved.



Can we continue to use consent that was given before GDPR?

Any existing consent can continue to be relied on so long as it was given in line with the GDPR requirements (including the need to document consent). However, it is likely that pre-existing consent will not meet these requirements. Therefore, if the prior consent does not meet the GDPR standard then you need to undertake one of the following actions:

- Seek fresh GDPR compliant consent.*
- Identify a different lawful basis for processing.
- Cease the processing.

* Please note, where you seek fresh consent the data subjects must signify acceptance by affirmative action. It would not be sufficient to say "If we don't hear from you we will assume you still consent."

A consent checklist:



Do ensure you have considered all appropriate lawful basis for processing data and based on this have decided that consent is the best one.



Do not use opt-out consent or pre-ticked boxes. You must ensure that consent is a positive opt-in.



Do use plain and clear language.



Do specify why the data is being collected and what it is being used for.



Do include information on the data controller and any third party controllers relying on the consent.



Do not make consent a pre-condition of a service.



Do ensure you are keeping clear records documenting consent and retaining these for the duration of the data processing.

Further information:

- If you need further information or have questions about consent please email gdpr@le.ac.uk
- Further guidance on data protection legislation is available at: <https://www.le.ac.uk/gdpr>

