



Section 5:

Public Interest Research

This section discusses research by or for public bodies and the research regime that is applicable to scientific research in the public interest under the UK DPA 2018.

5.1 Public sector bodies

Although the majority of provisions in the GDPR apply to all data controllers or data processors, there are some requirements that will apply differently to public sector bodies (“public authorities”). This includes limits on the processing grounds that can be used and the mandatory requirement to appoint a data protection officer.

5.1.1 Definition of public authority/public body

A public authority under the DPA 2018 is as defined by the Freedom of Information Act 2000, the Freedom of Information Act (Scotland) 2002 and any authority or body specified by the Secretary of State in Regulations. This currently includes broad categories including Government departments, legislative bodies, and the armed forces; local government; National Health Service; maintained state schools and further and higher education institutions such as universities; police; and other named public bodies.

5.1.2 Processing grounds for public authorities

Processing grounds for public authorities under the GDPR and DPA 2018 as set out in Figure 5 are:

- consent (as long as there is not an imbalance of power between the public authority and the data subject)
- performance of a task carried out in the public interest or in the exercise of official authority vested in the controller “public task”¹⁰
- substantial public interest
- scientific research in the public interest

Public task provides a basis for processing where laid down in law. This will include public authorities with research as an incorporated or statutory purpose (including NHS organisations, universities) as it includes University Charters. If using “public task” as a legal basis this must be internally documented and justified by reference to the statutory public research purpose.

¹⁰ Article 6(3) and Recital 45 make clear this ground will apply only where the task carried out, or the authority of the controller, is laid down in Union law or Member State law to which the controller is subject. This ground can only be used if carrying out official functions.



Public authorities can also fall under the research exemption where collecting special category data for scientific and/or statistical research in the public interest.

In a divergence from the GDPR, public sector bodies in the UK can rely on legitimate interests when carrying out non-public tasks. An organisation will only be a public authority "when performing a task carried out in the public interest or in the exercise of official authority vested in it." For example, the non-core functions of a university are likely to be alumni relations and fundraising for which legitimate interests can be used as a base as appropriate.

Data sharing gateways such as those set out in the Digital Economy Act 2017 may also provide important avenues in specific circumstances.

5.2 Public interest test

The GDPR and DPA 2018 do not set out a specific public interest test as this is likely to vary between sectors. It is important that any public interest test considers how best to balance public interest with fundamental rights and freedoms of individual in conducting market and social research.

It is clear that the public interest can cover research of wide benefit to society and the economy and covers research carried out by both commercial and non-commercial researchers, such as those based in university research centres, think-tanks, charities, not-for-profit and commercial research organisations

Researchers will need to carry out a balancing test, assessing the public interest in light of individual rights and freedoms. The approach to this will be similar to that used in assessing a legitimate interest.

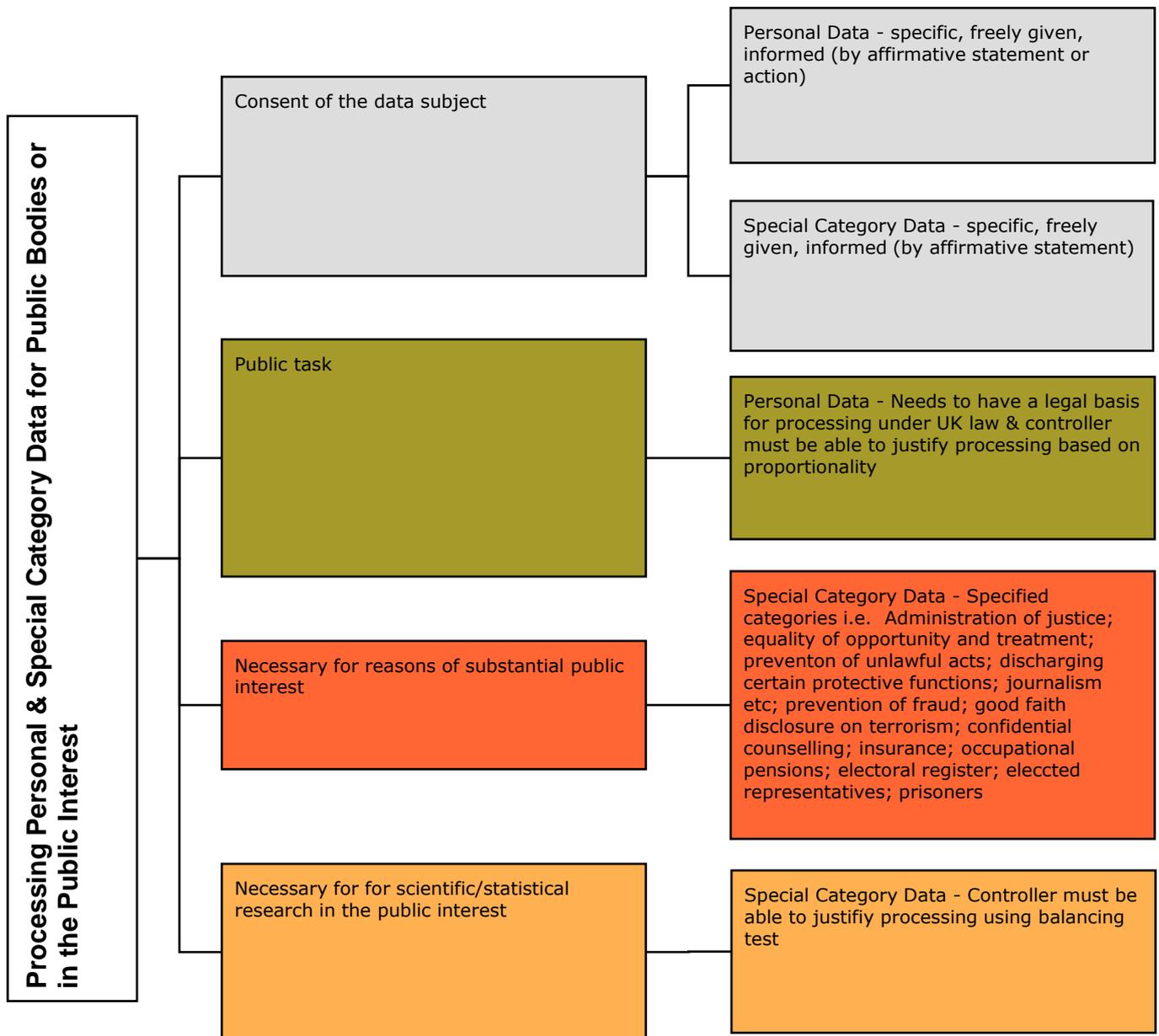
Issues to consider include:-

- What is the public interest being pursued?
- Is the processing necessary for the public interest?
- Do the data subject's rights override the public interest being pursued?

Guidance on the application of a public interest test for research purposes is detailed in (MRS/SRA Public Interest Research Guidance forthcoming May 2018).



Figure 5: Public authorities processing grounds (Articles 6,9, 10 GDPR; Sections 8, 10; Sched. 1 DPA 2018)





5.3 Research exemption

The GDPR and DPA 2018 contain a specific legal framework for personal data processed solely for specified research purposes. This “research exemption” applies to archival, scientific, statistical and historical research purposes.

The research exemption:

- provides a processing ground for special category data where scientific research is being carried out in the public interest;
- ensures that further processing of secondary data for scientific research will be considered compatible; and
- provides greater flexibility for necessary processing for research purposes particularly around certain data subject rights and notice requirements.

The research exemption is particularly important for research carried out for a public task or in the public interest such as research conducted by public bodies. However, the research exemption can be used by all researchers (whether based in private sector, public sector, charity sector or academia) depending on the type of research that is being conducted. Although this framework affords researchers with a certain level of flexibility, it should be noted that most of the provisions of the GDPR will still apply.

5.3.1 General conditions for the research exemption

The use of the research exemption requires mandatory safeguards:

- Appropriate safeguards to protect the right and freedoms of data subjects;
- Adequate technical and security measures entrenching the principle of data minimisation and using pseudonymised data as default;
- Compliance with recognised ethical safeguards

Under the DPA 2018 it is specified that the processing of the data must be exclusively for research purposes, and, the appropriate safeguards that need to be met include:

- not for measures or decisions with respect to the particular data subjects (unless necessary for approved medical research); and
- no likelihood of substantial damage or substantial distress to any data subjects.

Additionally, the research exemption can only be used where it is “necessary” and if being used to process special category data must be in the public interest.

The research exemption is not a substitute for openness and transparency. There are other categories of exemptions within the 2018 Act and these could apply to certain specific clients or projects. These are in areas such as national security, crime, taxation, health, education, social work, regulatory activity, journalism etc. Full details are listed in the DPA 2018.



5.3.2 Specific application

The research regime is set out in section 18 of the DPA 2018 which implements Article 89(1) of the GDPR.

Data processing for scientific research purposes can:

- use broad consents for scientific research where consent cannot be secured for all specific purposes at the outset of data collection;
- further use personal data for scientific or statistical research as a secondary compatible purpose;
- restrict the right of the data subject to object to processing of personal data (where necessary in the public interest);
- restrict the right of a data subject to exercise their "right to erasure" if it is likely to significantly impair processing for scientific research purposes;
- store personal data for longer periods;
- make isolated transfers of personal data to countries outside the EEA taking into account legitimate expectations of society for an increase in knowledge; and
- limit obligations on level of information provided to data subjects in scientific research if it would involve a disproportionate effort. Consideration of this must take into account the number of data subjects and the age of the data and appropriate safeguards must be adopted.

The DPA 2018 does not use the additional GDPR flexibility on additional rights, such as the right to restrict processing right to rectify inaccurate data; the right of a child to be forgotten must be adhered to. These rights are all applicable in research.

5.3.3 Consent for scientific research

In seeking consent for scientific research purposes, under the research exemption, all the standard general conditions for consent are expected to be met. However, in limited circumstances if the research purposes cannot be fully specified at the outset, then the data controller(s) should use transparent mechanisms to meet the essence of the consent requirements. This could include seeking consent in stages before each phase of the research begins and supplying participants with a comprehensive research plan at the outset of the research. Rigorous safeguards such as data minimisation, anonymisation or data security must always be applied, as with any research exercise. Standards set out in the MRS Code of Conduct must also be followed.

5.3.4. Transparency and research exemption

Article 14 of the GDPR provides for exceptions to the requirement to provide information in circumstances where the personal data has not been obtained directly from the data subject. This includes where:-

- it proves impossible (in particular for archiving, scientific/historical research or statistical purposes)
- it would involve a disproportionate effort (in particular for archiving, scientific/historical research or statistical purposes)

Points to take into account in determining this include the number of data subjects, the age of the data and any appropriate safeguards adopted. Appropriate safeguards must be taken, as is the case in all processing using the research exemption.



Research exemption in practice

Research exemption is suitable for a range of approaches including:

- Published social research projects
- Public health research
- Longitudinal studies

Public Interest Example No. 1

Dementia research

Research conducted on behalf of a charity in order to produce a rich and detailed understanding of the day to day lives of both people living with dementia and their carers, and to identify how people would like to be supported. Findings inform and support the charity's strategy and public advocacy. Research likely to be considered in the public interest as provide an evidence base for decisions likely to benefit the society and quality of life of people in the UK. Research exemption could be used as a basis to keep personal data for a longer period (subject to appropriate safeguards) if for example wished to repeat the survey and compare findings over a ten-year period.

Public Interest Example No. 2

Product instructions

Research conducted on instructions for non-prescription health product to ensure legible and easily understood by customers. If public interest is construed broadly this could fall within the public interest ensuring appropriate use of products by individuals.

Public Interest Example No. 3

Product branding design

Research conducted on branding of competitive non-prescription health product to determine which type of packaging considered more attractive by customers. This is unlikely to meet a public interest test as is purely research to obtain a competitive advantage.



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Codeline offers support and advice on the MRS Code of Conduct, Regulations and Guidelines. Data protection guidance is provided as general information for research practitioners. It is not legal advice and cannot be relied upon as such. Specific legal advice should be taken in relation to any specific legal problems or matters.