

# Lawful bases for processing personal data in DWP

This guidance explains what a lawful basis for processing personal data is and how to identify one for the personal data you are using.

## Key facts

The term **personal data** means information that relates to a living identifiable individual, for example a person's name or their NI number. A **data subject** is any person whose personal data is being collected, held or used by an organisation

Organisations that process personal data must do so lawfully. For DWP to process personal data lawfully it must use one of the following lawful bases set out in GDPR Article 6:

- **Public task:** the processing is necessary to perform a task in the public interest or for an official function, and the task or function has a clear basis in law. This includes processing which is necessary for the exercise of a function of the Crown, a Minister of the Crown or a government department. Most processing of personal data in DWP uses this lawful basis where the processing supports our core functions. DWP's core functions are listed below and in the [Personal Information Charter \(link is external\)](#);
- **Legal obligation:** the processing is necessary to comply with the law (not including contractual obligations);
- **Contract:** the processing is necessary under the terms of a contract with an individual, or because an individual has asked for specific steps to be taken before entering into a contract;
- **Consent:** the individual has given clear consent for their personal data to be processed for a specific purpose;
- **Vital interests:** the processing is necessary to protect someone's life.

Data ceases to be personal data where individuals can't be identified, such as by using pseudonyms or making the data anonymous. Taking this approach therefore removes the need to establish a lawful basis for processing altogether.

## What allows DWP to use someone's personal data?

With very few exceptions, DWP processes personal data using the **public task** lawful basis. That is because, as a government department, we need to deliver our functions that government has assigned to us. This establishes a lawful basis for processing the personal data and no other is needed.

DWP's functions are:

- social security (this includes benefits, grants, loans, pensions and Housing Benefit)
- child maintenance
- the investigation or prosecution of offences relating to tax credits and benefits
- prevention and detection of fraud, and protecting public funds
- employment and training
- promoting financial planning for retirement
- policy relating to occupational and personal pension schemes
- research and analysis into matters listed above

It is only where DWP is processing personal data that does **not** support one of these functions that an alternative lawful basis for processing is needed.

## Special category data

GDPR has special rules for 'special category' personal data, which is personal data about:

- racial or ethnic origin,
- political opinions,
- religious or philosophical beliefs,
- trade union membership,
- genetic data,
- biometric data for the purpose of uniquely identifying a natural person,
- data concerning health,

- data concerning a natural person's sex life or sexual orientation.  
DWP must specify an additional lawful basis set out in GDPR Article 9 when we process **special category** data. DWP can rely on a similar lawful basis to public task for processing special category data where the processing is **necessary for employment and social security and social protection law**. This lawful basis covers all of DWP's functions listed above.

#### **When to consider using another lawful basis**

Although very unlikely, it is possible for a situation to arise where the processing of personal data does **not** support one of DWP's core functions so that public task would not apply as a lawful basis for processing it.

If public task does not apply you must consider the other options as a lawful basis for processing. However, be aware that DWP does very little that is not connected to its core functions so it is important to look at the situation with great care when deciding which lawful basis to apply.

Take particular care when considering **consent** as the lawful basis. It is very important to note that there is a clear distinction between someone having a genuine choice to take part in a DWP activity on the one hand, and the lawful basis for the processing which follows on the other. Just because something isn't mandatory doesn't mean we have to rely on consent as the lawful basis for processing the data.

For example, a customer can agree to take part in a non-mandatory scheme to help them develop their job searching skills. However, because employment and training is one of DWP's functions, we can still rely on the public task lawful basis for the data processing which follows.

Where there is no alternative but to seek consent as a basis for processing, you must follow the [instructions on consent](#).

#### **Lawful basis for processing – Scenarios**

##### **Pilot exercise**

A DWP customer may be asked to take part in a pilot exercise to test a new child maintenance initiative. It is made clear to the customer that they are not obliged to participate if they prefer not to. However, if they do choose to take part, DWP would process any personal data that they provide on the public task basis because child maintenance is one of our functions.

##### **Not a DWP “customer”**

A data subject does not even have to be a DWP customer for public task to be used as a lawful basis. For example, a citizen who is not a DWP customer may be asked to provide personal data to inform social research on benefit take-up. The processing is necessary to perform a task in the public interest, so public task applies.

##### **Anonymisation**

When a team conducts a customer survey, for example on customer experience, it may choose to anonymise any personal data that is gathered for analysis. Having become anonymous, the data ceases to be personal. It follows that no lawful basis is required for processing the data.

##### **Example where we can rely on either public task or consent**

The Employer Adviser Retention Service is a voluntary DWP initiative aimed at helping people stay in employment. It connects employers and employees with local health providers and organisations that can help with assessing and providing the support which may be needed.

This relates to DWP's employment function so it would have been possible to rely on public task as our lawful basis for processing. However, in this case there were good reasons for relying on consent as the lawful basis for processing instead.

This service involves sharing data with a wide range of organisations and consent was the only **legal gateway** available to DWP for disclosing the personal data to those third parties. Relying on consent both as the legal gateway for disclosure to the other organisations and as the lawful basis for the rest of the processing needed to run the service made things simple and consistent.

Usually, relying on consent presents problems for DWP because of the conditions that are attached to it. However, in this case the data are not used for anything else, are not mixed with any other DWP data and can easily be deleted if consent is withdrawn. This meant that consent was a legitimate choice for the lawful basis for processing even though we could have relied on public task instead.

### **Other situations where “public task” would not apply**

Other specific situations in which DWP would use an alternative to the public task lawful basis for processing personal data:

**Legal obligation** (not including contractual obligations): This applies where DWP is required by law to process personal data rather than simply being permitted to do so, for example where DWP is instructed by Court Order to release specified information;

**Contract:** the basis for processing personal data in a commercial relationship is normally provided by a contract with the data subject, typically when they are buying something;

**Vital Interests:** DWP has a welfare function and a duty to protect members of the public and would rely on this heading where the processing of personal data (for example through a disclosure or referral) is necessary to avoid a risk to life.

It's unusual for any of these situations to arise in the normal course of DWP business.

### **Other lawful bases for processing special category data**

As with processing ordinary personal data there are likely to be few occasions in DWP where we cannot rely on the **employment and social security and social protection law** lawful basis. However there may be some limited circumstances where this is necessary. The other possible lawful bases that DWP could use for processing special category data are:

- **Consent** – as described above
- **Vital interests** – as described above
- Necessary for **legal claims or court proceedings**
- **Substantial public interest** – to rely on this lawful basis the data must be proportionate to the aim pursued and you must safeguard the fundamental rights and interests of individuals
- **Archiving for scientific or historical research purposes**

It is important to look at the situation with great care when deciding which lawful basis to apply and particularly when considering consent as the lawful basis.

### **Lawful bases for processing personal data of staff**

Processing the personal data of current, prospective or past employees is done using the following lawful bases as set out in the [DWP Employee Privacy Notice](#) on the HR intranet site:

- **Contract** - This is where you process staff data in relation to their conditions of service, such as pay and benefits, attendance, disciplinary, leave and working patterns. This is also the lawful basis to use for processing personal data for recruitment purposes.
- **Legal obligation** - This is where DWP is legally obliged to process staff data, for purposes such as health and safety, prevention of fraud, gift lists.
- **Public task** - This is used where you are processing staff data so that DWP can operate in order to deliver its functions, for example staff rotas, organisational charts, team planning, training and development.

The examples given above are not exhaustive.

### **Processing special categories of staff data**

The most common type of special category staff data processed in DWP is personal data relating to health. This could be in relation to sickness absence, occupational health, and disability. Usually the lawful basis would be for the purposes of employment and social security and social protection law.

## **Document the lawful basis for processing**

In most cases you do this by adding these details to your [Information Asset Inventory \(IAI\)](#) record for the information asset that holds the personal data.

If the asset does not meet the criteria for inclusion on the IAI you must ensure this information is recorded somewhere in case the Information Commissioner needs to ask you about it.

## **Lawful bases for processing - Summary**

DWP can legitimately use **public task** as the lawful basis for most, if not all, of its activities that require processing personal data. However, there are rare occasions where an alternative lawful basis must be used.

If one of these situations arises the data subject's consent is one possible lawful basis for processing. This could entail significant additional work, so be sure to check whether:

- the use of personal data could be avoided, for example by anonymisation;
  - consent, not public task, really is the only lawful basis that could properly be used.
- Where there is no alternative but to seek consent as a basis for processing, you must follow the [instructions on consent](#).

There are three other lawful bases (legal obligation, contract, vital interests) that, while rarely used, could apply to the processing of personal data in very specific circumstances.

An additional lawful basis must be used when processing special category data.

Different lawful bases apply when processing staff data.

## **Further information**

The Information Commissioner's Office has produced [comprehensive guidance \(link is external\)](#) about the lawful bases for processing personal data.