



The Church of Scotland

Data Protection – Consent Guidance

Consent is one of six legal bases that can be relied upon when processing personal data (See Data Protection Guidance for Congregations for more detail). For consent to be relied upon a number of conditions, detailed in UK GDPR Article 7, need to be met for consent to be considered valid. When consent is relied upon, it's vital that an appropriate privacy notice is in place informing the individual exactly what data is collected, for what purpose, how long the data is held for, what rights apply for this processing and how they can withdraw their consent.

Consent of an individual means any freely given, specific (this may often lead to more than one consent being required from the same individual for different uses (purposes) of their data), informed and unambiguous indication of the person's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her. It is no longer acceptable to have pre-ticked boxes or any other method of default consent as this does not provide the unambiguous indication of an individual's wishes.

As mentioned earlier, there are a number of conditions that must be met for consent to be considered valid. These are as follows:

- Controller must be able to demonstrate that the individual consented to processing their data (therefore a clear record must be held)
- If consent is given within the context of other matters, then the request for consent must be distinguishable from the other matters, in an intelligible and easily accessible form, using clear and plain language
- An individual has the right to withdraw their consent at any time. It should be as easy to withdraw consent as it is to give consent.
- It should not cause detriment to the individual if an individual withdraws their consent
- There must not be an imbalance between the controller and the individual. For example, it could not be used in an employment context as the employer/employee relationship is not equal.

If consent is used then the congregation must be able to prove compliance. This means that the congregation should keep a copy of the signed consent form as a record to evidence that consent has been properly given. If an individual does withdraw consent, then this record should be updated to ensure that the processing activity is no longer carried out with that individual's data. It is important to be particularly careful about compliance if a congregation is relying on consent *alone* as the legal basis for processing (it is an option to get the consent of the individual *in addition* to another legal basis for processing personal information). If the individual is a child, consent should be obtained in addition to relying on



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legitimate interests. When seeking consent of a child, it is necessary to seek the consent of the child's parent or guardian.

A sample consent form is available: [Data Protection Consent Form](#)

Consent can be given orally rather than in writing and in such circumstances, you should record in writing that consent has been given in this way. When relying on consent, keeping the record of that consent is important to evidence compliance. The ICO has provided useful checklists ([Consent | ICO](#)) for asking for consent, recording consent and managing consent.