**LEGITIMATE INTERESTS ASSESSMENT: INTRODUCTION**

The General Data Protection Regulation (GDPR) requires organisations to identify the basis on which they process personal data. Controllers (who decide the purposes and means of the processing of personal data) may process and share information on a number of different bases. One of these is consent; another is that they have a **legitimate interest** in doing so[[1]](#footnote-1). When information is gathered and used within and/or for the purposes of the Presbytery, it is likely to be most often processed on the basis of a legitimate interest, and not on the basis of consent. This basis of processing is likely to be appropriate where data is used in ways which people would reasonably expect, based on their relationship with the controller, and which have a minimal privacy impact; or where there is a compelling justification for the processing. There are three elements to the legitimate interests’ basis of processing. It is necessary to:

* identify a legitimate interest;
* show that the processing is necessary to achieve it; and
* balance it against the individual’s interests, rights and freedoms.

Controllers must demonstrate that they have fully considered the necessity of the processing and balanced this against the [rights of the individuals](https://churchofscotland.org.uk/site/privacy-centre/your-rights-and-choices) concerned and decided that these rights did not override the interests of the controller [(see Data Protection guidance on the Church of Scotland website)](https://churchofscotland.org.uk/resources/law-circulars#data_protection). This Legitimate Interests Assessment form has been produced to help Presbyteries with this process. It provides a number of sample questions, guidance for each question and example answers which may be relevant to satisfying all three elements of the test. Whilst it is hoped that the Form can be adapted and used by Presbyteries for this purpose, it should be remembered that not all of the examples given may be relevant to all situations. You should think carefully about all of the personal information which you process and ensure that all of it is reflected within your Form. **The following Form is for use only when the processing of information is for purposes other than: where consent has been provided; for the performance of a contract; in compliance with a legal obligation (including employment matters)**; **when the processing is *necessary* for the public interest.**

On completion of the Form, if it is found that the processing of any information is not in fact based on a legitimate interest (or one of the UK GDPR lawful bases for processing) you should seek advice from the Law Department by emailing: [LAWDEPT@churchofscotland.org.uk](mailto:LAWDEPT@churchofscotland.org.uk) or [Privacy@churchofscotland.org.uk](mailto:Privacy@churchofscotland.org.uk) and referencing “Legitimate Interests Assessment” as the subject.

Presbyteries must also ensure that they have the appropriate Privacy Notice(s) available to those whose information is being processed.

Guidance on Privacy Notices, including example one for Presbyteries, can be found on the Church of Scotland website under “Resources” and “Law Department Circulars”.

**[*Insert Presbytery Name*] (“Presbytery”)**

**Legitimate Interests Assessment Form**

***[insert date]***

This form should be completed and signed on behalf of the Presbytery and held on file in order to evidence the basis on which information is processed. The assessment should be reviewed in the event of a new processing activity or, where there is no change to processing, annually.

Additional guidance on data protection is available from the Church of Scotland website at this link: <http://www.churchofscotland.org.uk/resources/law_circulars#data_protection>.

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| **A) IDENTIFYING A LEGITIMATE INTEREST** | | | | |
|  | **Question** | | **Answer** | **Guidance** |
| 1 | What is the processing operation? | | *[The collation and use of personal information including names, contact details and bank details of members of the congregation and those in contact with it. Information pertaining to former members of the congregation is also retained for a time in order to restore contact should that be desired. Such information is obtained directly from individuals or from sources within the Church of Scotland and may also be supplied by third parties, for example in connection with safeguarding.]* | This section provides detail about what personal information is being obtained, held and used. It also identifies that data may be held on supplementary rolls. Information on supplementary rolls should be reviewed at least every 5 years and unless there is a legitimate interest in maintaining the data on a supplementary roll it should be removed. |
| 2 | What is the purpose of the processing operation? | | *[Information is processed for the legitimate interests of the Presbytery, including but not limited to pastoral activities; charitable purposes; the provision of care or services; employment matters; safeguarding; legal requirements; for the performance of a contract; or to meet legal obligations. All of these purposes are in line with the reasonable expectations of the individual when engaging with the Presbytery.]* | Be specific to the purpose of processing, e.g. pastoral care, safeguarding |
| 3 | Is the processing necessary to meet one or more speciﬁc organisational objectives? | | *[Yes. The processing is necessary for the proper administration and facilitation of Presbytery activities; for the purposes of communication and updates; the provision of pastoral care; and the advancement of religion.]* | The answer is likely to be “yes”.  If the processing operation is required to achieve an objective of the Church of Scotland then it is likely to be legitimate for the purposes of this assessment. |
| 4 | Is the processing necessary to meet one or more speciﬁc objectives of any Third Party? | | *[Yes/No]*  *[Detail might include:*  *Where necessary, such as for the distribution of communications, third parties may also have a legitimate interest in processing the data but that will not be the primary specific objective of any third party]* | While you may only need to identify one legitimate interest for the purposes of an LIA – the interest that you are seeking to rely on - it is useful to list all apparent interests in the processing i.e. those of the controller as well as those of any Third Party who are likely to have a Legitimate Interest. |
| 5 | What Third Parties are provided with personal data and why? | | *[N/A] OR*  *[List any third parties to whom personal information is supplied and the reason(s) why.]*  *[Detail might include the name of a third party provided with contact details for the purposes of distributing publications and other updates.]* | Third Parties may be provided with personal information without explicit consent of the data subject in order to meet the expectations of the data subject – for example distribution of a publication that the recipient has requested. |
| 6 | Does the Data Protection Act 2018, UK GDPR, ePrivacy Regulation or other national legislation speciﬁcally identify the processing activity as being a legitimate activity, subject to the completion of a balancing test and positive outcome? | | *[Yes*  *The legislation applicable to processing carried out in the legitimate interests of the Church of Scotland includes: GDPR Recitals 45; 47; 48; 49; 50; 52; 53; and 55; and GDPR Articles 6 and 9.]* | It is suggested that the provided wording is used to answer this question. |
| **B) THE NECESSITY TEST** | | | | |
|  | **Question** | | **Answer** | **Guidance** |
| 1 | Why is the processing activity important? | | *[Processing such data allows the Presbytery to ensure that those in contact with it may safely engage with the life of the Church, receive updates and have access to services and information relevant to their requirements.]* | A Legitimate Interest may be elective or critical. However, even if the personal data is processed for a speciﬁc purpose that is obvious and legitimate, the purpose must be a clearly articulated and communicated to the individual. Congregations, Presbyteries and the National Offices must ensure that they have Privacy Notices in place. See the guidance available on the Church of Scotland website. |
| 2 | Why is the processing activity important to other parties the data may be disclosed to, if applicable? | | *[The data may be disclosed by the Presbytery to other parties within the Church of Scotland for the benefit of its members and those in contact with the Church; as a means to fulfill its legitimate aims and, where necessary, with third parties, for example: for the distribution of communications; for the provision of care and services; for the performance of contracts; for property related matters and for compliance with legal obligations.]* | Just because the processing is central to what the organisation does, that does not make it legitimate. It is the reason for the processing balanced against the potential impact on an individual's rights that is key. |
| 3 | Is there another way of achieving the objective? | | *[Yes/No]*  *[Detail might include:*  *The overarching objective of the Church of Scotland is the advancement of religion and to share in the fellowship of Christ.*  *Holding information and using it for communication across the Church, and where necessary communication with third parties, for the provision of services, information and resources to members and to those in contact with the Church, for a wide variety of purposes, is critical in meeting that objective and allowing the Church to function as a religious organisation.* *It is impractical for the Presbytery to obtain explicit opt-in consent from every person to the processing of their personal data.]* | If there isn’t another way of achieving the objective then clearly the processing is necessary; or if there is another way but it would require disproportionate effort, then the processing is  still necessary; or  If the processing is not necessary (t is unlikely that there will be many scenarios where a processing operation is not necessary where it has been identiﬁed as being a means to achieve a stated, legitimate, objective), then Legitimate Interests cannot be relied on as a lawful basis for that processing activity. |
| **C) THE BALANCING TEST** | | | | |
|  | | **Question** | **Answer** | **Guidance** |
| 1 | | Would the individual expect the processing activity to take place? | *[Yes/No.*  *Those in contact with Presbytery of the Church of Scotland have a reasonable expectation that their personal information will be processed by the Church in order to facilitate their membership of, or contact with, the Church of Scotland.]* | If individuals would expect the processing to take place then the impact on the individual is likely to have already been considered by them and accepted. If they have no expectation, then the impact is greater and is given more weight in the balancing test. |
| 2 | | Does the processing add value to a product or service that the individual uses? | *[Yes/No/N/A]*  *[The processing of such data allows the Church of Scotland to provide communication, care, support and services to individuals including: members, former members, those in contact with the Church, employees and appointees.]* | Presbytery is not in the business of offering a product or commercial service so likely the answer here is No. |
| 3 | | Is the processing likely to negatively impact the individual’s rights? | *[Yes/No]* | Will the individual suffer any detriment as a result of their personal information being used by the Presbytery? It is anticipated that the answer to this question will be “No”. |
| 4 | | Is the processing likely to result in unwarranted harm or distress to the Individual? | *[Yes/No]* | The answer is likely to be “no”.  Will the individual suffer any detriment by their personal information being used? |
| 5 | | Would there be a prejudice to the Controller if processing does not happen? | *[Yes/No]*  *[Presbytery - and the Church as a whole - would not be able to function effectively as a religious organisation without processing individuals’ data.]* | The answer is likely to be “yes”.  What happens if the data is not processed? |
| 6 | | Would there be a prejudice to the Third Party if processing does not happen? | *[Yes/No.*  *In some circumstances, yes. The Presbytery only shares information with third parties where necessary for the distribution of communications; as required to meet legal obligations; for the provision of care and services; and for the legitimate operation of the church as a religious organisation in line with the reasonable expectations of the data subject. There would be prejudice, for example, to vulnerable people if the Presbytery was not able to share information with the statutory authorities and the Church’s Safeguarding Service where concerns arise.]* | The answer is likely to be “no”.  If a third party is involved in the processing of personal information would they be adversely affected if the information was not shared with them? |
| 7 | | Is the processing in the interests of the individual whose personal data it relates to? | *[Yes/No*  *The Presbytery is a voluntary association and all those joining or associating with it are doing so on a voluntary basis. The processing enables such individuals to be kept informed about Presbytery activities and allows targeted care and support to be provided to those who may need it because of infirmity or illness.]* | The answer is likely to be “yes”.  Personal data should only be used where it is in the interests of the data subject |
| 8 | | Are the legitimate interests of the individual aligned with the party looking to rely on their legitimate interests for the processing? | *[Yes/No.*  *Those in contact with the Presbytery have made a choice to have that contact. Both the data subjects and the data processor are part of the same voluntary association and have the same charitable purpose in view, namely the advancement of religion. This principle also applies to former members of the Church of Scotland who may, for a time, remain on supplementary rolls in accordance with Church law. Accordingly the legitimate interests of the individual are aligned with the legitimate interests of the Church of Scotland.]* | The answer is likely to be “yes”.  If the processing is to the beneﬁt of the individual, then it is more likely that Legitimate Interests can be relied on, as the individual’s interests will be aligned with those of the Controller. Where the processing is more closely aligned with the interests of the Controller or a Third Party, than with those of the individual, it is less likely that the interests will be balanced and greater emphasis needs to be placed on the context of the processing and relationship with the individual. |
| 9 | | What is the connection between the data subject(s) and the organisation? | *[In this context, data subjects include:*   * *Current and former members of the Presbytery* * *Individuals attending worship, including children* * *Individuals involved in using church premises, including children* * *Employees, office-holders, volunteers and contractors* * *Suppliers* * *Adherents and those in contact with the Church with the common purpose of the advancement of religion* * *Those in contact with the Church in connection with property related matters*   *List any additional relevant categories of data subjects.]* | The aim of this section is to clarify the relationship between the Presbytery and those whose information the Presbytery might use. |
| 10 | | What is the nature of the data to be processed? Does data of this nature have any special protection under GDPR? | *[The Presbytery processes information including names, contact details, bank details, children’s data, safeguarding issues and images and special categories of personal data including but not limited to: religious views, health issues, sexuality, racial/ethnic origin. Much if not all of this data is special category personal data because it by implication discloses a person’s religious beliefs. The Presbytery endeavours, so far as reasonably practicable, to ensure that all data that is processed is handled confidentially]* | If processing special categories of personal data, a GDPR Article 9 condition must be identiﬁed as the lawful basis of processing.  In the case of the Church of Scotland the relevant lawful basis is found at Article 9(2)(d).  Please note that permission should be sought from a parent/guardian when processing information relating to anyone under the age of 18. |
| 11 | | Is there a two-way relationship in place between the organisation and the data subject(s)? If so how close is that relationship? | *[Yes/No.*  *The organisation exists only through its members and adherents and all personal data processed for the legitimate activities of the Presbytery will foster that two-way relationship.*  *The Church of Scotland views itself as being open and inclusive and accordingly considers that relationships are two-way and continue unless a connection between an individual and the Church of Scotland has reached a natural end (for example, the provision of a service is no longer required) or if an individual has made it clear that they no longer wish to have contact with the Church of Scotland.]* | Where there is an ongoing relationship, or indeed a more formal relationship, there may well be a greater expectation on the part of the data subject(s) that their information will be processed by the organisation. Accordingly, data should be reviewed and unless there is a legitimate reason to keep it (this includes supplementary rolls) it should be appropriately disposed of.  The opposite is also possible but it does depend on the purposes of the processing. |
| 12 | | Would the processing limit or undermine the rights of individuals? | *[Yes/No]* | The answer is likely to be “no”.  Will the individuals suffer any detriment by their personal information being used? |
| 13 | | Has the personal information been obtained directly from the data subject(s), or obtained indirectly? | *[A mix of both.*  *Personal information is generally obtained by the Presbytery direct from data subjects unless the data subject lacks capacity to provide that information themselves. Information is also provided to the Presbytery indirectly for example by statutory agencies for safeguarding purposes or by other churches, or by the broader Church of Scotland, in pursuit of the legitimate interests of the Church of Scotland as a religious organisation.]* | The answer is likely to be “a mix of both”.  If the information was obtained directly from the data subject(s) then you should take due consideration of the notice of fair processing (e.g. your Privacy Notice), the relationship with the individual and their expectations of use. If the data was collected directly and these factors are positive, then it may help to tip the balance in favour of the processing operation. Where Personal Data is not collected directly, there may need to be a more compelling Legitimate Interest to overcome this. It will also depend on the context of the processing and if the organisation has a two-way relationship with the data subjects. |
| 14 | | Is there any imbalance in who holds the power between the organisation and the individual? | *[No. Data subjects are for the most part in contact with the Presbytery on a voluntary basis and in pursuit of a common goal namely the advancement of religion. The Presbytery has a privacy notice explaining what information is held, what is done with it and the legal basis on which it is used and what rights individuals have and if the right to object applies to their data being processed.]* | It is recommended that the suggested wording is used for this question.  This section notes that privacy notices must be available to data subjects. Example Privacy notices for congregations and Presbyteries are available from the Church of Scotland website under the [“Resources/Law Department Circulars/Data Protection”](https://churchofscotland.org.uk/resources/law-circulars#data_protection) tabs. It’s important that every Presbytery has a privacy notice in place explaining how information is collected, what is done with it and the legal basis on which is used. It’s also important to highlight what rights apply. |
| 15 | | Is it likely that individuals may expect their information to be used for the purposes outlined in your privacy notice and in this legitimate interest assessment? | *[Yes/No/Not sure.*  *Individuals in contact with the Presbytery would reasonably expect that it is necessary for the Presbytery and the Church of Scotland to hold information and use it for communication across the Church, and where necessary communicate with third parties for: the provision of services; administration information; and resources for members and to those in contact with the Church, for a wide variety of purposes. Those in contact with the congregation have a reasonable expectation that this processing is necessary to meet the legitimate objectives of the Church, allowing the Church to function as a religious organisation and providing services to the broader community, in particular the parish which the Presbytery serves.]* | The answer is likely to be “yes”.  Given the relationship between the parties, the nature of the services/communications being provided and in light of the provision of privacy notices, would the individual reasonably expect or anticipate that their information would be used for those or connected purposes? The stronger the expectation, the greater the chances that Legitimate Interests can be relied on. |
| 16 | | Could the processing be considered intrusive or inappropriate? | *[Yes/No*  *No, because it is in line with the reasonable expectations of the data subjects.]* | The answer is likely to be “no”.  It should be borne in mind that using personal information should not be an intrusion into the private life of an individual. It may be justified based on the nature of the relationship or special circumstances. However, the greater the intrusion, perceived or otherwise, the more overwhelming the Legitimate Interest should be and the more the rights of the individual must be considered within the balance. Consider here the way the data is processed (e.g. large scale, data mining and disclosure to a large number of people of publication.)  If a member of the Presbytery is in poor health it would be appropriate to mention them in intimations and prayers but it would not be appropriate to circulate details of their illness without their explicit permission.  Permission must be sought from parents/guardians if any information being shared relates to children. |
| 17 | | If the processing might be intrusive are there any steps that can be taken to address that, such as seeking permission from the data subject(s)? | *[N/A*  *Or*  *Explain what other steps might be taken]* | If the processing would not be expected or is otherwise likely to be intrusive the safest option will be to seek the consent of the data subject(s) for their information to be used. |
| 18 | | Is a privacy notice made available tothe individual, if so, how? Are they sufficiently clear and up front regarding the purposes of the processing? | *[Yes/No.*  *Privacy notices are provided to individuals when they become a member of the Presbytery and are available from the Presbytery’s website and available on request]* | The answer is likely to be “yes”.  Every Presbytery must have a privacy notice explaining how information is collected, what is done with it and the legal basis on which it is used. Church of Scotland privacy notices emphasise that individuals may object to their data being processed and provide instructions on how to do that.  Remember that the more unusual, unexpected or intrusive the processing, the greater the importance of making the individual aware of the processing. Particularly where Legitimate Interests are to be relied on.  A style of privacy notice is available from the Church of Scotland website. |
| 19 | | Can the individual, whose data is being processed, control the processing activity or object to it easily? | *[Yes/No.*  *The Presbytery’s privacy notice provides instructions to data subjects on how to exercise their rights including how to object to their information being processed. In the event of an objection all processing will cease unless permitted under data protection laws.]* | The answer is likely to be “yes”.  The “right to be forgotten” is not an absolute right. In some circumstances it may be necessary to retain, or continue to process, an individual’s information despite an objection ([see guidance on the Church of Scotland’s website](https://churchofscotland.org.uk/resources/law-circulars#data_protection)).  If you receive an objection and require guidance you should contact the Presbytery Clerk in the first instance. |
| 20 | | Can the scope of the processing be modiﬁed to reduce/mitigate any underlying privacy risks or harms? | *[Yes/No*  *The Presbytery processes a minimal amount of information, only in line with the purposes for which it was provided and with a view to safeguarding privacy by using steps such as password protection, encryption and secure storage.]* | The answer is likely to be “no”.  However, if you conclude that the processing presents a privacy risk to the individual, the processing should be limited or adapted to reduce the potential impact. |

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| **D) SAFEGUARDING AND COMPENSATING CONTROLS** | |
| Safeguards and Compensating Controls: Safeguards include a range of compensating controls or measures which may be put in place to protect the individual, or to reduce any risks or potentially negative impacts of processing. For example: data minimisation, anonymisation,, technical and organisational measures, privacy by design, adding extra transparency, additional layers of encryption, multi-factor authentication, retention, restricted access, opt-out options, hashing, salting, and other technical security methods used to protect data.  Please include a description of any compensating controls that will be put in place or are already in place to preserve the rights of the individual.  *[The Presbytery endeavours to ensure that personal data is kept as secure as reasonably possible by using measures such as: the use of encryption and password protection on devices (including external storage devices); data minimisation and compliance with good practice in data retention; restricted access (where applicable); the use of privacy notices; and seeking consent for use of information relating to children and/or particularly sensitive information. It has appointed someone with responsibility for data protection and is familiar with the Guidance issued by the Church’s Law Department and has effective data protection and data retention policies in place.]* | |
| **E) REACHING A DECISION AND DOCUMENTING THE OUTCOME** | |
| Using the responses above now document if you believe you are able to rely on Legitimate Interests for the processing operation. Please explain, perhaps using bullet points, why you are, or are not, able to rely on this legal basis. You should draw on the answers you have provided in this LIA.  *[Taking the above answers into consideration and in line with the data protection requirements for relying on legitimate interests for the processing of data, the Presbytery considers that the processing of personal information of those in contact with it is required in order to achieve the legitimate objectives of the Presbytery and the Church of Scotland, in line with the reasonable expectations of data subjects and in fulfillment of the data subjects' interests. The nature of the data being processed and the purposes for which it is processed are at the lower end of the scale of risk. Any limited risk can be mitigated by appropriate safeguards and controls.]* | |
| Signed by:  On behalf of Presbytery | Role:  (Specify the role of the person completing this assessment) |
| Date: | |
| Review date:  It is recommended that your Legitimate Interests Assessment is reviewed on an annual basis or earlier in the event of any change in processing. If there are any changes, a new assessment should be completed. If there are no changes that should be recorded and stored on file. | |

1. UK GDPR recitals 40 through 55 and Articles 6 (1)(f) and 9(2)(d) [↑](#footnote-ref-1)