

GDPR

Lawful basis

What's new?

Why is a lawful basis important?

What bases are available?

Which basis is most appropriate?

FAQs



What's new?

Mirrors the requirement to satisfy a 'condition for processing'



Changes for public authorities



Requirement to be transparent and to document



What's new?

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FAQs



The first principle requires personal data to be processed lawfully, fairly and in a transparent manner

You need a lawful basis under Article 6 for processing to be lawful

You must be able to demonstrate that a lawful basis applies to comply with the accountability principle in Article 5(2)



Articles 13 and 14 require you to include your lawful basis within the privacy information you give to individuals

You should include this information in your privacy notice

The lawful basis for your processing can affect which rights are available to individuals



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What lawful bases are available?

Consent

Contract

Legal
obligation



What lawful bases are available?

Vital
interests

Public
task

Legitimate
interests



Consent

- Offers individuals real choice and control
- Requires a positive opt in
- Is specific and granular
- Is clear, concise and kept separate from other terms and conditions
- Is easy to withdraw

Please see the separate consent slideshow for more

I Agree

Contract

You can rely on this basis if you need to process someone's personal data:

- To fulfil a contractual obligation to them; or
- Because they have asked you to do something prior to entering into a contract.

The processing must be necessary – it must be a reasonable and proportionate way of achieving your purpose.



Contract

Take care if the contract is with a child under the age of 18 – you may need to check their capacity

The right to object will not apply when using contract as a lawful basis (unless objecting to marketing). Individuals will have the right to data portability

Remember to document your lawful basis and include it in your privacy notice



Legal obligation

You can rely on this basis if you are required to process personal data to comply with a common law or statutory obligation

Includes regulatory requirements where there is a statutory regulatory regime and regulated organisations are required to comply

You must be able to identify the obligation in statute or an appropriate source of guidance



Legal obligation

The processing must be necessary – it must be a reasonable and proportionate way of achieving your purpose

When using legal obligation as your lawful basis, the individual has no right to erasure, data portability or to object

Remember to document your lawful basis and include it in your privacy notice

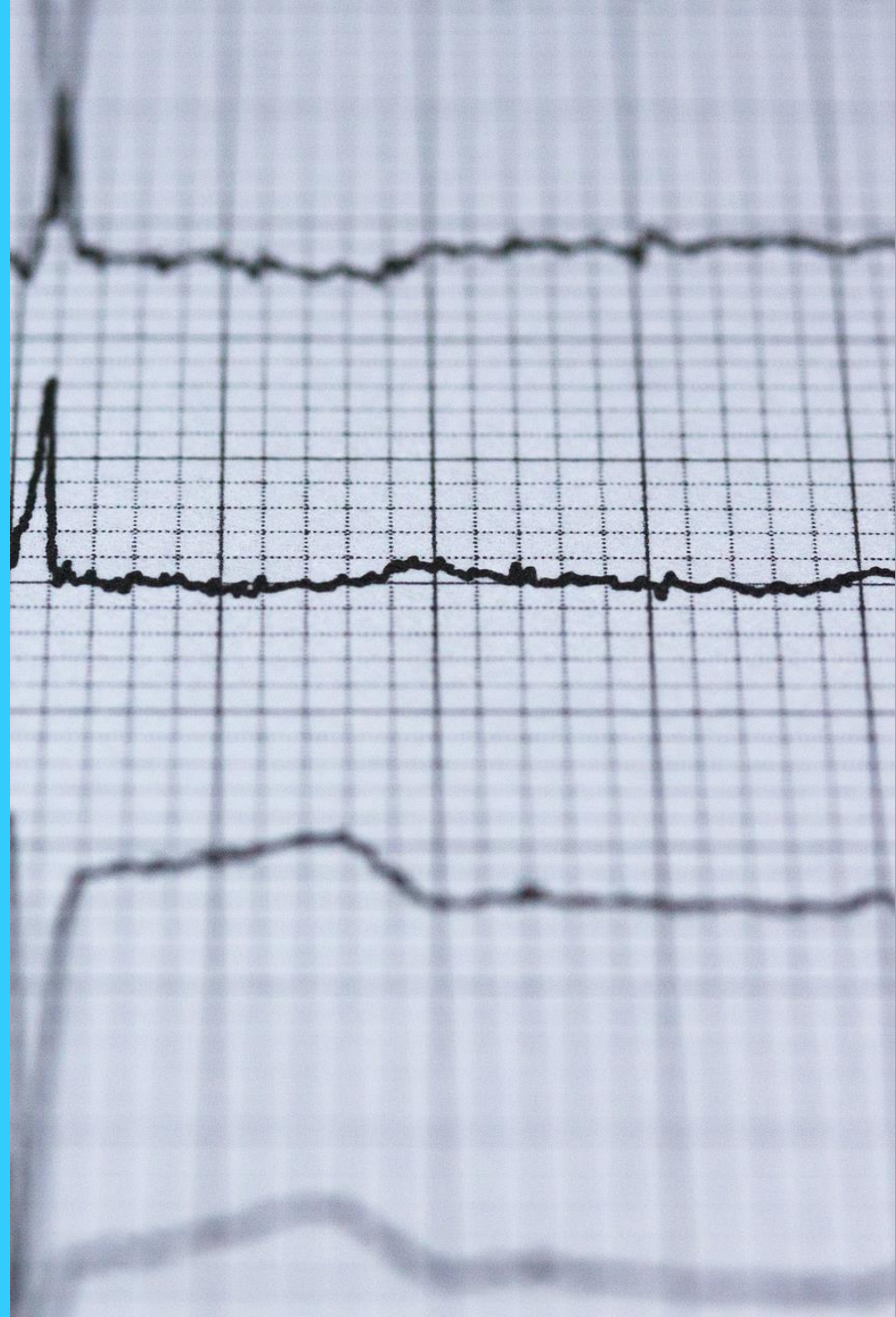


Vital interests

You can rely on vital interests if you need to process the personal data to protect someone's life

The processing must be necessary – it must be a reasonable and proportionate way of achieving your purpose

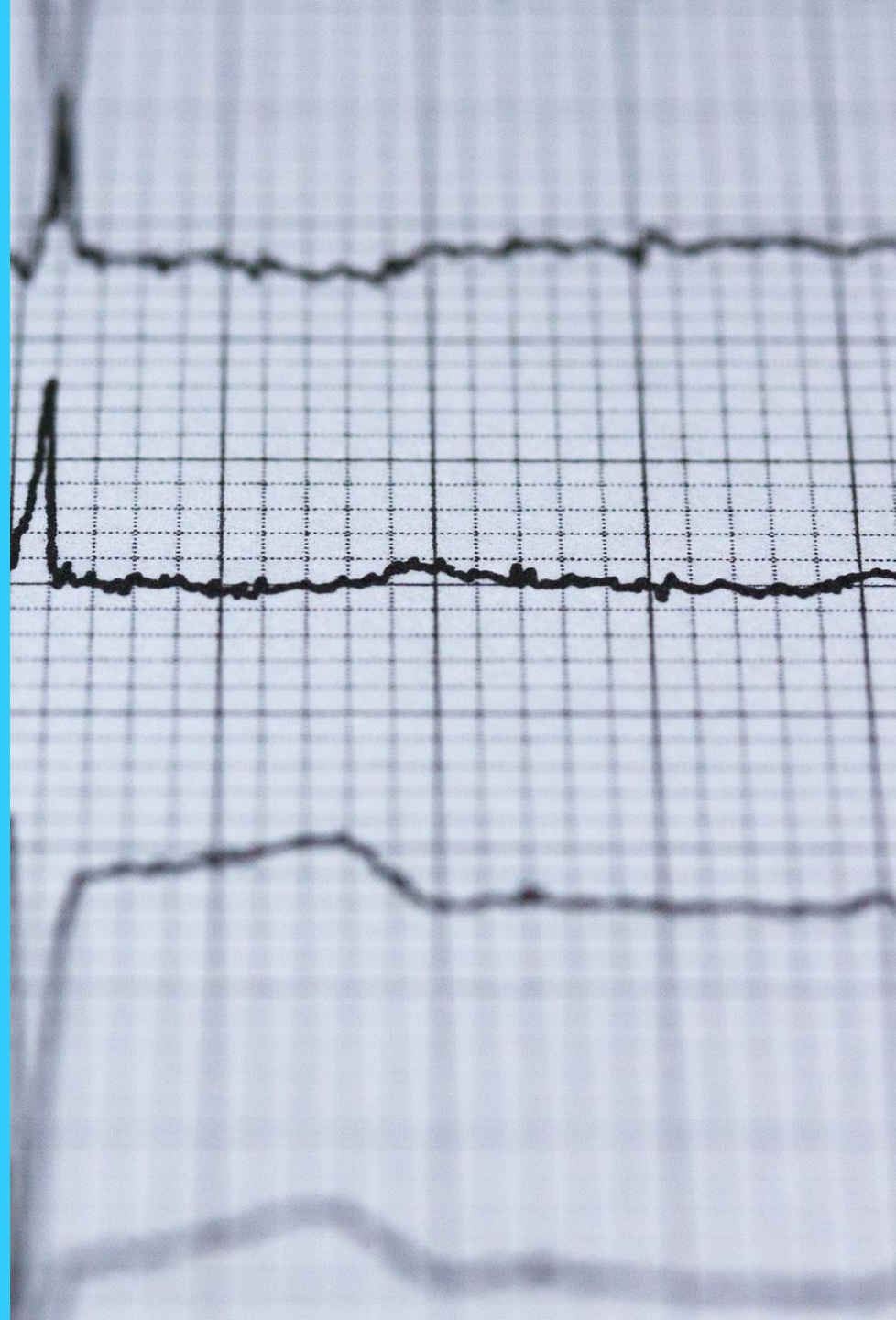
Less likely to be appropriate for non-emergency medical care or for large scale processing, unless on humanitarian grounds



Vital interests

Less likely to be appropriate to process one person's data for the vital interests of another person

Vital interests is most likely to be relevant in the context of health data – if so you also need to identify a condition for processing special category data



Public task

You can rely on public task if you process personal data:

- In the exercise of official authority; or
- To perform a specific task in the public interest that is set out in law

You do not need a specific statutory power to process personal data, but your underlying task, function or power must have a clear basis in law

You do not need to be a public authority.



Public task

The processing must be necessary – it must be a reasonable and proportionate way of achieving your purpose

The Data Protection Bill says the following will be covered:

- administration of justice
 - parliamentary functions
 - statutory functions
 - governmental functions
- (but this isn't exhaustive)

You must be able to identify the obligation in statute or an appropriate guidance source.



Public task

You should also ensure that you can demonstrate there is no other reasonable and less intrusive means to achieve your purpose

The right to data portability does not apply, however the right to object will

If you later process the data for archiving, scientific research or statistical purposes, a separate lawful basis is not needed

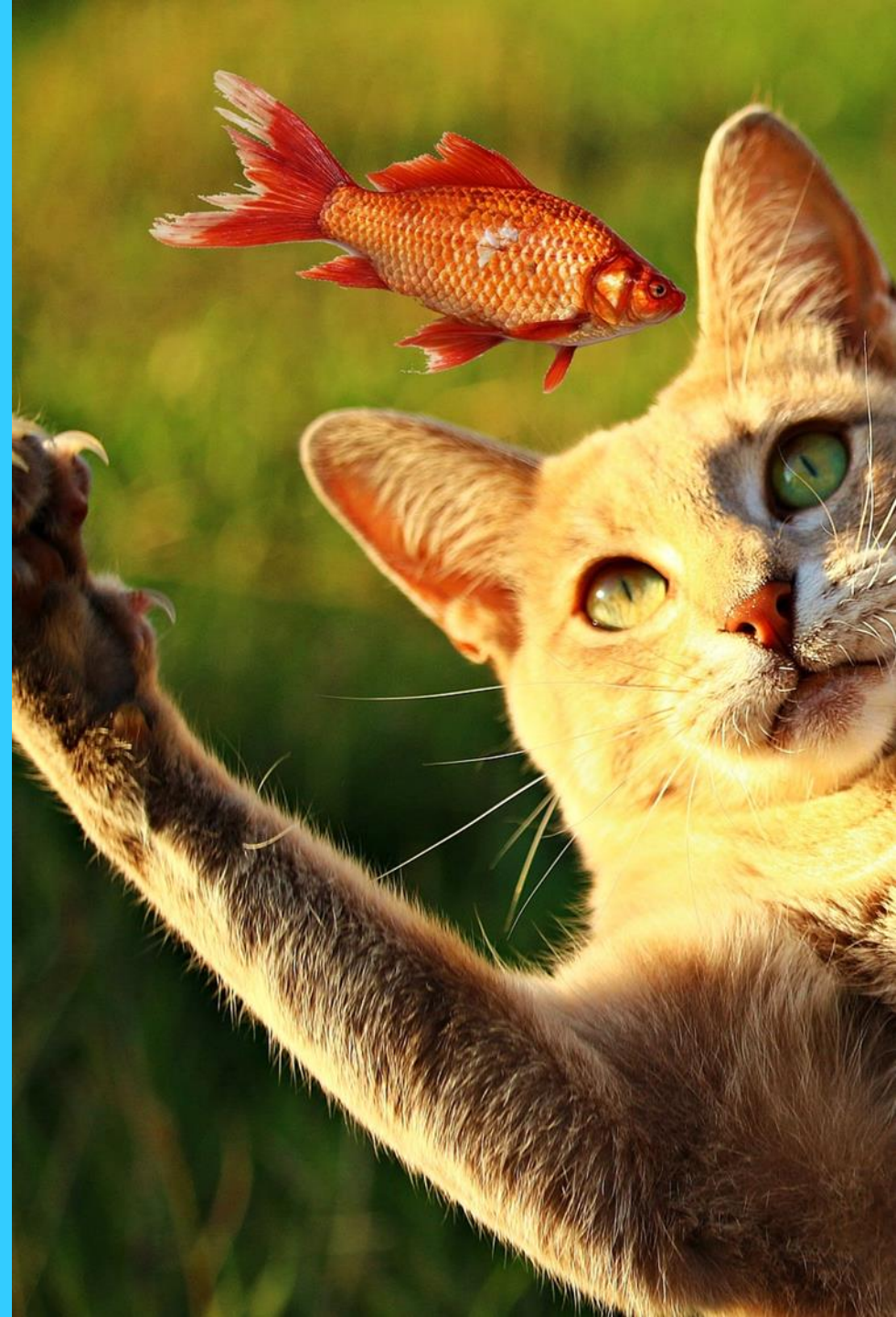


Legitimate interests

Likely to be most appropriate where you use data in ways people would reasonably expect, with minimal privacy impact, or where there is compelling justification.

Public authorities can only use where the processing is not to perform their tasks as a public authority

See our separate legitimate interests slideshow for more



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No basis is better, safer or more important than the others

You should consider a number of factors when deciding your lawful basis, including:

- What is your purpose?
- Can you reasonably achieve it a different way?
- Do you have a choice over whether you process the data?
- Are you a public authority?



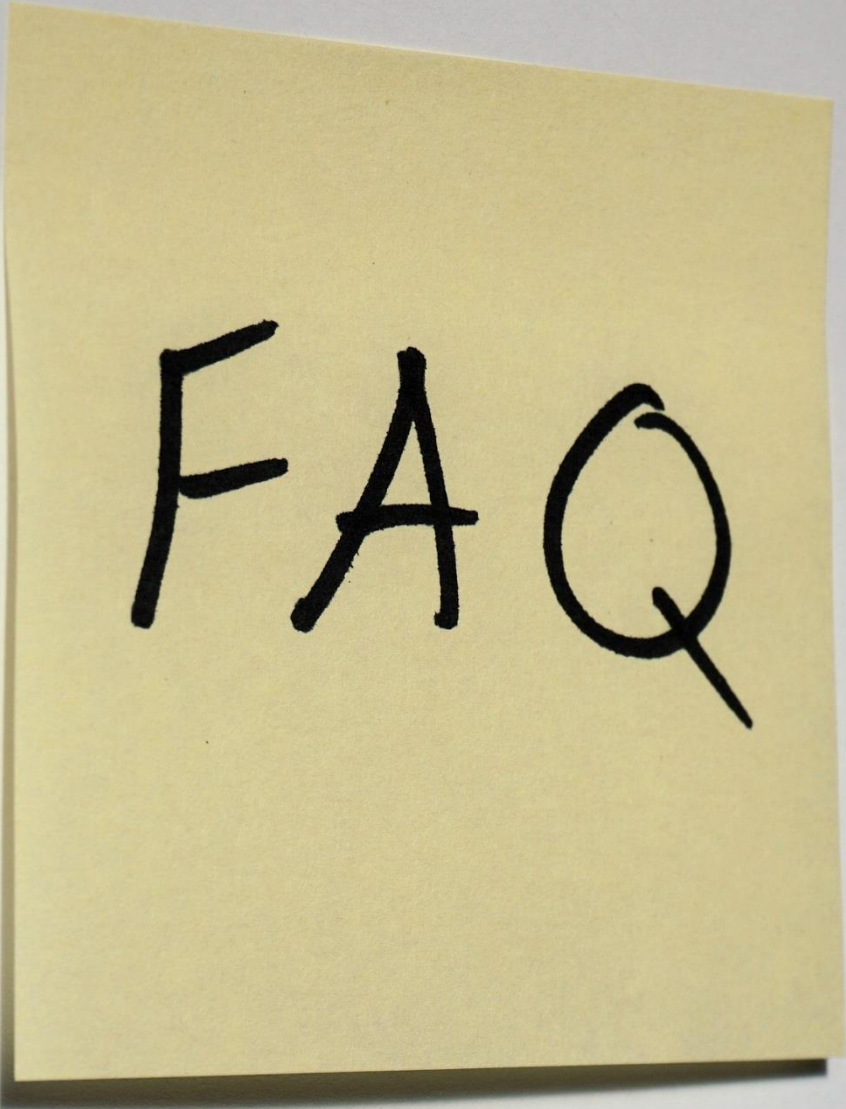
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FAQs



FAQ

FAQs

When should we decide on our lawful basis?

Before starting to process the data.

It is important to get it right first time as it is difficult to swap later.

You need to be clear and transparent from the start.

FAQs

What happens if we have a new purpose?

You may not need to change your basis.

You should assess if the new purpose is **compatible** with the old. If not, you need to identify a new basis.

FAQs

How should we document our lawful basis?

You need to keep a record of the lawful basis for each processing activity be able to **demonstrate** why you believe it applies. There is no standard form, provided you have included sufficient detail.

FAQs

What do we need to tell people?

You need to include information about your **purposes** for processing and your **lawful basis** in your privacy notice. This applies whether you obtain the data directly from the individual or a another source.

FAQs

What about special category data?

You need both a lawful basis for processing and a special category condition for processing.

You should document both.

FAQs

What about
criminal
offence data?

You need both a lawful
basis for processing
and a separate
condition for
processing this data.

You should document
both.

More information is available...

Pick up a
leaflet from
the hub

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lawful basis
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