GDPR

Consent
What’s new?

When is consent appropriate?

What is valid consent?

How do we get consent?
Granular and separate

What does 'granular' mean?

- Separate consent for separate things
- Separate from your terms and conditions
- Specific to your purposes and methods
Unambiguous and clear affirmative action
Unambiguous affirmative action

It must be obvious that they intended to consent – there can be no doubt

A clear affirmative action means a clear action to opt in
No pre-ticked opt-in boxes
No pre-ticked opt-in boxes

Don’t use pre-ticked opt-in boxes...

...or rely on any other form of silence, inactivity, or consent as the default
Identity of the controller
Identity of the controller

You must name your organisation

...and name any third party controller relying on the consent... categories of third parties is not specific enough
Right to withdraw consent
Right to **withdraw consent**

Individuals have the right to withdraw consent at any time

You must tell them this **when** you get consent
Right to withdraw consent

Individuals have the right to withdraw consent at any time.

It must be as easy to withdraw consent as to give it.
Right to withdraw consent

Individuals have the right to withdraw consent at any time.

You must stop processing as soon as possible.
Clear records of consent
Clear records of consent

You will need to show:

- Who consented...
- What they were told...
- How they consented
- When they consented...
What’s new?
When is consent appropriate?
What is valid consent?
How do we get consent?
When **should** you use consent?

- There's no other appropriate lawful basis
- You want to give people choice and control
- Or you are required to have consent
When **not** to use consent
When **not** to use consent

- If you would do it anyway – asking for consent is misleading and inherently unfair
- If you are in a position of power – they may feel they have no choice
- If consent is a condition of service but not necessary for the service
Remember there are alternatives to consent
Contract with the individual

Compliance with a legal obligation

Protecting vital interests

‘Public task’ - official functions or public interest tasks laid down by law

Legitimate interests
What’s new?

When is consent appropriate?

What is valid consent?

How do we get consent?
“Any freely given, specific, informed and unambiguous indication of the data subject'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”
Consent must be:

- **Freely given**
  (genuine choice & control)

- **Specific and informed**
  (targeted to your purpose & easy to understand)

- **Unambiguous by a clear affirmative action**
  (a clear signal that they agree)
Explicit consent
Explicit consent

Explicit consent is not very different from regular consent... however...

It must be affirmed in a clearly worded statement (either written or oral)...

Drink Me
Explicit consent

Explicit consent is not very different from regular consent... however...

It must specifically refer to the element of processing that requires explicit consent...
Explicit consent

Explicit consent is not very different from regular consent... however...

A request for explicit consent should be separate from other consent requests
Consent timescales
Consent timescales

There is no specific timescale for expiry of consent in the GDPR

How long consent lasts will depend on the context...

For example...
Consent timescales

There is no specific timescale for expiry of consent in the GDPR

How long consent lasts will depend on the context...

The scope of the consent...
Consent timescales

There is no specific timescale for expiry of consent in the GDPR.

How long consent lasts will depend on the context...

The individual’s expectations...
Consent timescales

There is no specific timescale for expiry of consent in the GDPR.

How long consent lasts will depend on the context...

If the processing has evolved beyond the original consent...
There is no specific timescale for expiry of consent in the GDPR.

And don’t forget consent can be withdrawn at any time — in which case you must stop the processing.
When is consent not consent?
For example, it’s not consent:

If it’s not obvious that the individual has consented;

If you can’t actually prove that you’ve got consent;

If you weren’t named as seeking consent from the individual;

If you used pre-ticked opt-in boxes or other methods where consent is the default; or

If you’re not sure – as that means it’s not unambiguous!
What’s new?

When is consent appropriate?

What is valid consent?

How do we get consent?
Your consent request must be:

Prominent – make it obvious

Separate and granular – separate from T&Cs and separate consent for separate things

Concise – don’t be vague or long winded and rambling

Easy to understand – use plain language and don’t be confusing
As a minimum you must:

Name your organisation

Name any third parties who will be relying on the consent

Explain your purposes and activities (what you’ll be doing and why)

Tell people they can withdraw consent at any time
Methods of obtaining consent
Methods of obtaining consent

You can use a range of possible methods...

For example...

The individual signs a consent form...
Methods of obtaining consent

You can use a range of possible methods...

For example...

The individual ticks an opt-in box, either online or offline...
Methods of obtaining consent

You can use a range of possible methods...

For example...

The individual says ‘yes’ to a clear oral request for consent
Evidence of consent
Evidence of consent

You need evidence of:

Who

The individual’s name or other identifier (eg username, session ID)
Evidence of consent

You need evidence of:

Who

When

eg a dated document, electronic timestamp, or a note of the date and time of the conversation
Evidence of consent

You need evidence of:

Who
When
What

eg a master copy of the document with the consent request, or script that was used at the time
Evidence of consent

You need evidence of:

- Who
- When
- What
- How

E.g. a copy of the data capture form, the data submitted online (with timestamp), or a note of oral consent made at the time.
Reviewing and refreshing
Reviewing and refreshing

Keep consent under regular review, and refresh if your purposes evolve beyond those originally specified.

There is no such thing as ‘evolving consent’ because consent must be specific.
Reviewing and refreshing

Keep consent under regular review, and refresh if your purposes evolve beyond those originally specified.

Consider whether to automatically refresh at appropriate intervals.
Reviewing and refreshing

Keep consent under regular review, and refresh if your purposes evolve beyond those originally specified.

How often you need to refresh consent will depend on the particular context and expectations.
What about existing DPA consents?
No requirement to automatically refresh all existing DPA consents

But you need to make sure that your existing consents meet the GDPR standard

If your existing consents don’t meet the GDPR standard you need to:

- seek fresh GDPR consent;
- identify a different lawful basis; or
- stop the processing.
More information is available...

Pick up a leaflet from the hub
Check out our lawful basis tool
Visit our website www.ico.org.uk
This slideshow will restart shortly

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