

## Chartergates Fact Sheet

### SUBJECT: THE DATA PROTECTION PRINCIPLES UNDER THE GDPR

The GDPR data protection principles set out the overall responsibilities that businesses and other organisations must comply with in relation to the collection, storage and [processing](#) of [personal data](#).

The principles are similar to those currently contained in the DPA with the important addition of an [accountability](#) principle, which requires that controllers must be able to demonstrate how they comply with the other principles as set out below.

The GDPR data protection principles require that personal data must be:

1. Processed lawfully, fairly and in a transparent manner;
2. Collected only for specified, explicit and legitimate purposes and not be further processed in a manner which is incompatible with those purposes;
3. Limited to what is necessary for the purposes for which it is processed;
4. Accurate and kept up to date;
5. Kept for no longer than necessary;
6. Processed in a way that ensures appropriate security of the personal data.

#### *Lawfulness of Processing Conditions*

Under the GDPR, the processing of personal data is only lawful if at least one of the following applies:

1. The [data subject](#) has given consent to the processing of their personal data for one or more specific purposes;
2. Processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
3. Processing is necessary for compliance with a legal obligation to which the controller is subject;
4. Processing is necessary in order to protect the vital interests of the data subject or of another person;
5. Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
6. Processing is necessary for the purposes of the legitimate interests pursued by the [controller](#) or by a third party

#### *Processing of special categories of personal data*

Under the GDPR, the processing of what is referred to as '[special](#)' categories of personal data is generally prohibited, unless one of the exceptions in the Regulation applies. The special categories include data which reveals details about a person's:

- ✓ Racial or ethnic origin;
- ✓ Political opinions;
- ✓ Religious or philosophical beliefs;
- ✓ Trade union membership;
- ✓ Identity, following the processing of genetic or biometric data;

- ✓ Health;
- ✓ Sex life or sexual orientation.

Extra care should therefore be taken if the processing of any personal data may include or relate to any of the above categories. Importantly, one of the exemptions in the GDPR is where processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the fields of employment law, social security and social protection law.

### *Consent*

Under the GDPR, consent must be:

- ✓ Freely given;
- ✓ Specific;
- ✓ Informed; and
- ✓ Unambiguous.

It is important to bear in mind that to comply with the above, the GDPR requires that there must be some form of clear 'opt-in' in order for consent to be validly given. For example, consent cannot be assumed from silence or inactivity. Consent must also be provided separately from any other terms and conditions. For example, a consent clause contained in an employment contract will not therefore suffice, a separate agreement will be required.

However, it is important to bear in mind that consent is only one of the conditions which can apply for the processing of data to be lawful under the GDPR. Processing will also be lawful where, for example, it is necessary for the performance of a contract. This may well be relevant where an employer is required to process the relevant personal data of employees or workers.

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