



Research with Children: Guidance on Data Protection Issues

1. Introduction

Purpose of this Guidance

This guidance provides an overview of the key points to consider from a data protection perspective in relation to research projects involving children, focusing on the following topics:

- the 'legal bases' under data protection law for processing children's personal data;
- data protection rules in relation to children's consent;
- what information must be provided to children before their data is processed; and
- the new principle of 'accountability' set out in data protection legislation.

It has been produced to assist researchers to comply with their obligations under the General Data Protection Regulation (**GDPR**) and the new UK Data Protection Act 2018.

This guidance was last updated on **8 March 2019**. It takes into account the Information Commissioner's Office (**ICO**) draft guidance on [child specific considerations and the GDPR](#) and may be updated to reflect changes made to the final version.

Please note that this should be read in conjunction with UCL's Data Protection Policy and other relevant research/ethics guidance. This includes:

- (a) the 'Guidance for Researchers: Implications of GDPR and DPA 2018' [here](#);
- (b) the guidance relating to research ethics available on the IOE Ethics website [here](#);
- (c) BERA 'Ethical Guidelines for Educational Research' available [here](#);
- (d) the BPS 'Code of Human Research Ethics' available [here](#); and
- (e) the 'Guidance for Researchers on Appropriate Safeguards under the General Data Protection Regulation 2016 (GDPR) and the Data Protection Act 2018 (DPA)' [here](#).

Scope of this guidance

This guidance applies only insofar as personal data, i.e. any information relating to an identified or identifiable natural person, is processed as part of a research project.

As is the case with data relating to adults, where data relating to children is fully anonymised, the requirements imposed by data protection legislation will not apply.

How is a 'child' defined?

The ICO considers anyone under the age of 18 to be a child. This is in accordance with the UN Convention on the Rights of the Child which defines a child as everyone under 18 unless, 'under the law applicable to the child, majority is attained earlier' (Office of the High Commissioner for Human Rights, 1989). The UK has ratified this convention.



Note that children may be less aware of the risks, consequences, and rights in relation to the processing of their personal data.

2. Establishing a 'legal basis' for collecting and using personal data

Background

In order to comply with data protection law, before researchers can collect and use any personal data, they will need to establish that one of the 'legal bases' set out in Article 6(1) of the GDPR applies.

In UCL's view, the appropriate 'legal basis' to rely upon in a research context is Article 6(1)(e):

the personal data 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

This legal basis will need to be specified in application forms submitted to the relevant ethics committee and in the information provided to research participants, eg privacy notices and participant information sheets.

Special category or criminal convictions data: additional basis for processing required

In addition to a lawful basis for processing under Article 6(1) GDPR, a further basis for processing will need to be established in circumstances where: (a) 'special category' data such as religion, race, ethnic origin; or (b) any information relating to an individual's criminal convictions is processed.

UCL's view is that when processing either 'special category' data or information relating to criminal convictions/offences, the derogation for research processing set out in the Data Protection Act 2018 should be relied upon, i.e. where the processing is necessary for archiving/scientific/historical research purposes or statistical purposes.

3. Consent

Consent as a legal basis for processing personal data

Article 6(1) GDPR lists consent as one potential basis for processing personal data. However, the GDPR imposes very strict requirements in order for consent to be valid. In particular, consent must be freely given, specific and informed (covering all relevant purposes for the processing by all relevant parties) and unambiguous, and a positive action is required to **opt in** – failure to opt out does not constitute consent for the purposes of the GDPR. Individuals may withdraw their consent at any time.

UCL's view is therefore that researchers should **avoid relying on consent** as their legal basis for processing and that the 'public task' basis is the appropriate ground to use. This approach is in accordance with current ICO guidance and means that the higher standards in relation to consent that are imposed by the GDPR will **not** need to be met.

If, in exceptional circumstances and following the receipt of approval from the Data Protection Office, you do choose to rely on consent as the legal basis for processing you must always consider whether the individual



child has the competence to understand and consent for themselves. If not, the child's consent will not be valid.

Where a child is not competent to give consent, the consent of someone with **parental authority** over them will need to be obtained. You should take steps to verify such consent where appropriate. The agreement of a teacher or head teacher in the child's school will not be sufficient to constitute consent for the purposes of the GDPR.

Note that where a child is competent enough to consent for themselves to a particular research intervention, it is still good practice to involve their family as part of the decision-making process unless the child specifically asks the researcher not to do so.

Where children are in a potentially vulnerable or within a dependent position it is important to ensure that they have the time and opportunity to discuss their choice to participate with a trusted adult.

As it is difficult to meet the consent standards set out in the GDPR, the 'public task' ground and/or another legal basis (such as the ground for research processing, in respect of special category or criminal convictions data) is most likely to be more appropriate in the circumstances.

Obtaining consent where consent is not the legal basis for processing

In order to obtain ethical approval for a project, researchers will generally need to obtain the informed consent of individual participants for their involvement in the research.

However, consent to participation in research is not the same as using consent as the legal basis for processing under the GDPR. For example, a person may be asked to consent to participate in research and told that, if they agree to participate, data about them will be processed for a task in the public interest. Here, the legal basis for data processing will be 'public task' rather than consent.

Whilst consent to participate in a project obtained for ethics purposes must be fully informed and freely given, in addition to meeting other requirements, researchers do not therefore need to obtain consent that meets the standards set out in the GDPR.

However, other specific standards may apply. Please consult relevant IOE Ethics guidance and other sources such as the BPS guidance referred to above for further information on this topic.

Where data is truly anonymised (rather than simply being pseudonymised), data protection legislation will not apply. Again, depending on the circumstances, consent may be sought, but this will not be governed by data protection law.

Parental 'opt out consent'

For the purposes of the GDPR, there is no concept of parental 'opt out consent'. This is because data protection law requires consent to be explicit and 'opt-in'. However, where a different legal basis for processing is used (such as the 'public task' basis), parental 'opt out consent' may be sought, depending on the circumstances of the research. This should not be confused with consent obtained for the purposes of the GDPR.

Any requirement for consent/parental opt out consent which does not relate to the legal basis for processing must be considered on a case by case basis, taking into account the relevant risks.



Information to be provided to children before their data is processed

In order for the processing of personal data to be fair and lawful under data protection legislation, individuals (whether they are children or adults) must be provided with particular information on the processing to be carried out. The information to be provided is set out in data protection legislation. It includes what the data will be used for, with whom it will be shared and how long it will be kept for.

If you seek consent to process personal data for research purposes, you should be as specific as possible when telling the relevant children or adults how their data will be used, at least identifying the general areas of research. Where possible, individuals should be given granular options to consent only to certain areas of research or parts of research projects.

Transparency is key in this context, and it is good practice to explain the risks inherent in the processing and the safeguards you have put in place.

When providing information notices to children, you should write in a concise, clear and plain style. Notices should be age-appropriate and presented in a way that appeals to a young audience

You should also ensure that the information is targeted at the relevant age group. For example, you should make a distinction between addressing a 10 year-old and addressing a 16 year-old child. If your target audience covers a wide age range, consider providing different versions of your notice.

Information notices for children must be presented in a way that is appealing to a young audience. Graphics and videos that will attract and interest children may be appropriate. In an online context, you should consider the use of dashboards, layers, just-in-time notices, icons and symbols.

If you are relying upon parental consent as your lawful basis for processing it is good practice to provide separate privacy notices aimed at both the child and the responsible adult.

Accountability

In order to comply with the new 'accountability' requirement under the GDPR, controllers must be able to demonstrate compliance with data protection legislation.

In practice, this means that in addition to establishing a legal basis for processing, the selected basis must be documented. Evidence of the fair processing information provided to data subjects must also be kept, along with evidence of how the other data protection principles have been complied with as part of the research project.

Questions?

If you require any further information on the issues raised in this document, please use the contact details below:

- For data protection enquiries, please contact the data protection team at data-protection@ucl.ac.uk; or
- For ethics enquiries, please contact the ethics team at ioe.researchethics@ucl.ac.uk.