

Regional Health and Social Care Information Sharing Agreement

Information Governance Steering Group 8th August 2028

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The Data Protection Act 2018 has a requirement when special category personal data is processed on the basis of specific conditions in the UK-GDPR, known as the “substantial public interest” conditions, that the processing is supported by an “appropriate policy document” (APD).

The Construction of the APD

The purpose of this policy is to set out the Regional Health and Social Care Information Sharing Agreement approach to the provision of the required APD documentation in support of processing performed under the agreement.

The substantial public interest conditions are applicable to processing with a legal basis provided by the GDPR articles:

- 9.2.b “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 field of employment and social security and social protection law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject”; and
- 9.2.g “processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject”.

The APD should demonstrate that the processing is compliant with the requirements of the UK-GDPR Article 5 principles and outline the retention policies applicable to the processed data.

A number of the joint processing and sharing specifications (Schedule K documents) within the Regional Information Sharing Agreement Framework rely on one or more of the above legal bases and in those cases an APD is required.

It is accepted that an APD does not have to be a single document. Furthermore, an APD can cover multiple separate processing activities and an APD can reference and rely on further policies and procedures that are relevant.

The joint processing and sharing arrangements implemented under the Regional ISA are supported by both the specification¹ itself as well as a related Data Protection Impact Assessment (DPIA). These schedules, together with the master agreement itself set out the conditions of access and mandatory organisational controls. The specification, the DPIA² and the master agreement documents taken together, have been assessed to sufficiently cover the APD requirements as well as to define the scope of the joint controller organisations to which an APD applies³.

It is the decision of IGSG that the combination of documents set out above meet the requirement for APDs for processing under the Regional Health and Social Care Information Sharing Agreement and that this policy is the start point for any request for an APD for any joint processing and sharing performed under the agreement.

Stipulation of the applicable “substantial public interest condition”

Associated with the requirement for an APD is a requirement that a relevant Schedule 1 condition from the Data Protection Act 2018 is identified as part of the APD documentation. The substantial public interest condition that is appropriate for processing performed under the above legal bases is:

1. Schedule 1, Part 2, paragraph 6 “Statutory etc and government purposes”; and
2. Sub-paragraph 2(a) “the exercise of a function conferred on a person by an enactment or rule of law”.

This applies where organisations are performing a function that the organisation is empowered to perform by legislation (e.g. an ICB processing data for commissioning purposes).

¹ Copies of the Schedule K documents can be found here <https://www.regisa.uk/documents/schedc.html>.

² Copies of DPIAs can be found here <https://www.regisa.uk/documents/schedp.html>.

³ The relationship between joint controller organisations and the joint processing and sharing arrangements can be found here <https://www.regisa.uk/index.php/specifications/26-direct-care-processing-and-sharing-arrangements-2>.

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In order to meet the Data Protection Act 2018 requirement, the above condition is to be explicitly included in Schedule K documents and DPIAs that rely on the legal bases set out above.

Where existing specifications and DPIAs are based on one of the above legal bases but do not explicitly include a reference to Schedule 1, Part 2, paragraph 6 and sub-paragraph 2(a) it is the decision of IGSG that this policy serves to extend Schedule 1, Part 2, paragraph 6 and sub-paragraph 2(a) to the processing concerned.

This policy takes effect from 8th August 2023 and expires on the 30th April 2028.

Version 1 (final).