



Data Protection Consent Policy

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Headteacher: _____

For and on behalf of the Governing Body: _____



Data Protection Consent Policy

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Summary

What is this policy about?

This policy outlines Conwy County Borough Council's approach to using consent as a lawful condition for processing personal data.

Who is this policy for?

The policy applies to all staff, contractors, agency workers and elected members.

How does Conwy County Borough Council check this Policy is followed?

All staff and elected members must complete a mandatory online module on information management to evidence that they understand data protection legislation. Data Protection is part of the contractual terms with contractors and agency workers.

Who can you contact if you have questions about this policy?

Derek O'Connor

Information Governance

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E-mail: info-gov.unit@conwy.gov.uk

1. Introduction

Data protection legislation requires that personal data shall be processed lawfully, fairly and in a transparent manner. There are 6 conditions that can be used for processing personal data lawfully. This policy relates to just one of those conditions, - that the data subject gives their consent. The policy also covers the implications that occur when choosing the consent condition. The new Data Protection Legislation sets a higher standard for consent than previous legislation, and defines it as

“any freely given, specific, informed and unambiguous indication of the data subject’s wishes by which they, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to them.”

The council needs to carefully consider whether consent is the most appropriate legal basis for processing personal data. Consent is just one lawful basis for processing **and should only be used where no other lawful basis is appropriate**. Public authorities, employers and other organisations in a position of power over individuals should avoid relying on consent unless they can confidently demonstrate it is **freely given** – using the definition above.

2. Aims of the Policy

This policy sets out in what circumstances the Council should be relying on consent as the legal basis for processing personal and sensitive personal data.

3. Scope

In accordance with the new Data Protection Legislation, the consent of the data subject may in certain circumstances be required for the processing of their personal data.

4. Definitions

| | |
|---|--|
| Data Subject | An identifiable living person that the data relates to. |
| Consent | Obtaining the data subjects permission to process their personal data for the stated purpose. (Consent should only be used where no other lawful basis is appropriate). |
| Personal data | Information relating to identifiable individuals, such as clients, customers, job applicants, current and former employees, current and former elected members, agency, contract and other staff, clients, suppliers and marketing contacts. <i>Personal data we gather may include: individuals' contact details, educational background, financial and pay details, details of certificates and diplomas, education and skills, marital status, nationality, job title, and CV. (This list is not exhaustive)</i> |
| Special categories | Special categories data includes an individual's racial or ethnic origin, political opinions, religious or similar beliefs, trade union membership (or non-membership), physical or mental health or condition, criminal offences, or related proceedings. <i>Any use of special categories data should be strictly controlled in accordance with this policy. Special categories also includes biometrics, DNA, facial and fingerprint recognition.</i> |
| Data Controller and Data Processor | The data controller is the person (or business) who determines the purposes for which, and the way in which, personal data is processed. By contrast, a data processor is anyone who processes personal data on behalf of the data controller (excluding the data controller's own employees) |

5. The lawful basis for processing personal data with consent

Personal Data

Consent is just one lawful basis for processing personal data, there are five other basis that the Council could possibly rely on. You should always choose the lawful basis that most closely reflects the true nature of the Council's relationship with the individual and the purpose for processing.

Data Protection Legislation states: processing shall be lawful only if and to the extent that at least one of the following applies:-

- (a) **Consent:** the individual has given clear consent for you to process their personal data for a specific purpose. **(Consent should only be used where no other lawful basis is appropriate.)**
- (b) **Contract:** the processing is necessary for a contract you have with the individual, or because they have asked you to take specific steps before entering into a contract.
- (c) **Legal obligation:** the processing is necessary for you to comply with the law (not including contractual obligations).
- (d) **Vital interests:** the processing is necessary to protect someone's life.
- (e) **Public task:** the processing is necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law.
- (f) **Legitimate interests:** the processing is necessary for your legitimate interests or the legitimate interests of a third party unless there is a good reason to protect the individual's personal data which overrides those legitimate interests. (This does not apply to public authorities processing data to perform official tasks.)

Seek advice if/when considering (f) above, this is not a condition that would normally be available to CCBC.

Special Categories Data

Similarly, explicit consent is one way to legitimise processing special category personal data, but not the only way. There are nine other conditions for processing. The alternative conditions for processing special category data are generally more restrictive and tailored to specific situations.

- a) **Explicit consent of the data subject,** unless reliance on consent is

prohibited by EU or Member State law.

- b) Necessary for the **carrying out of obligations** under employment, social security or social protection law, or a collective agreement.
- c) Necessary **to protect the vital interests** of a data subject who is physically or legally incapable of giving consent – this is the equivalent of the wording in the DPA.

- d) Processing carried out in the course of its **legitimate activities with appropriate safeguards** by a not-for-profit body with a political, philosophical, religious or trade union aim provided the processing relates only to members or former members (or those who have regular contact with it in connection with those purposes) and provided there is no disclosure to a third party without consent.
- e) **Data manifestly made public** by the data subject.
- f) Necessary for the **establishment, exercise or defence of legal claims** or where courts are acting in their judicial capacity.
- g) Necessary for reasons of **substantial public interest** on the basis of Union or Member State law which is proportionate to the aim pursued and which contains appropriate safeguarding measures – this means that Member States can extend the circumstances where sensitive data can be processed in the public interest.
- h) Necessary for the purposes of **preventative or occupational medicine**, for assessing the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or management of health or social care systems and services on the basis of Union or Member State law or a contract with a health professional.
- i) Necessary for **reasons of public interest in the area of public health**, such as protecting against serious cross-border threats to health or ensuring high standards of healthcare and of medicinal products or medical devices
- j) Necessary for **archiving purposes in the public interest, or scientific and historical research** purposes or statistical purposes.

Consent is **not** appropriate if:

- The Council will still process the personal data without consent.
- The processing involves the performance of a contract, which includes the provision of a service.
- There is an imbalance of power between the Council and the data subject. For example, those who rely on our services, might feel they have no choice but to agree.

6 Obtaining Consent

To obtain valid and lawful consent it must:-

1. Be freely given; the data subject must have real choice and control over how their data is processed.
2. Be prominent, separate from other terms and conditions, concise and

easy for the intended reader to understand

3. Be obvious and require a positive action to opt in.
4. Be reviewed and refreshed in line with the purposes of processing.
5. Be as easy to withdraw as it was to obtain.

Examples of when/where consent might be considered

- a) A local council runs a number of fitness centres. It wants to find out what people think of the facilities in order to decide where to focus improvements. It decides to email a questionnaire to individuals who have fitness memberships to ask them about the facilities.

The decision as to whether or not to take part in the survey is entirely optional, and given the nature of the relationship and the survey there is no real risk of adverse consequences for failing to respond. The council could consider relying on consent to process the responses.

- b) An employer decides to make a recruitment video for its website. It has instructed some professional actors but gives staff the opportunity to volunteer to have a role in the video. The employer makes it clear that there is no requirement for any staff to take part and participation will not be taken into account for performance evaluation purposes.

As participation is optional and there are no adverse consequences to those who do not want to take part the employer could consider consent.

How to obtain and manage consent:

- Make consent prominent, brief but comprehensive and in clear easy to understand language.
- Inform the data subject of the controller's name (i.e. Conwy County Borough Council) and that of any joint controller. Inform them of the purpose for the processing, how the data will be processed and that they have the right to withdraw their consent at any time.
- Give clear instructions on how the individual can withdraw their consent.
- Remember - individuals must actively *opt in*.
- Do not use pre-ticked boxes or opt out boxes.
- Wherever necessary, give granular options to consent separately to different purposes and different types of processing.

Where processing is based on consent, the Council must be able to demonstrate that the data subject has consented to processing their personal data by maintaining records of:-

- Who consented (name and signature if necessary).

- When consent was obtained (date).
- Exactly what they were told at the time.
- When consent was withdrawn

Capacity to consent

If a data subject lacks the capacity to understand the consequences of consenting, a third party with the legal right to make decisions on their behalf (e.g. under a Power of Attorney) can give consent and exercise the data subjects rights.

Children

If you are relying on consent as your lawful basis for processing personal data of a child, only children aged 13 or over are able provide their own consent.

For children under this age consent must be obtained from whoever holds parental responsibility or guardianship for the child.

When relying on consent, we must make sure that the child understands what they are consenting to, and we do not exploit any imbalance in power in the relationship between us

- Children need particular protection when you are collecting and processing their personal data because they may be less aware of the risks involved.
 - If you process children's personal data then you should think about the need to protect them from the outset, and design your systems and processes with this in mind.
 - Compliance with the data protection principles and in particular fairness should be central to all your processing of children's personal data.
 - You need to have a lawful basis for processing a child's personal data. Consent is one possible lawful basis for processing, but it is not the only option. Sometimes using an alternative basis is more appropriate and provides better protection for the child.
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- Children merit specific protection when you use their personal data for marketing purposes or creating personality or user profiles.
 - You should not usually make decisions based solely on automated processing about children if this will have a legal or similarly significant effect on them.
 - You should write clear privacy notices for children so that they are able to understand what will happen to their personal data, and what rights they have.
 - Children have the same rights as adults over their personal data. These include the rights to access their personal data; request rectification; object to processing and have their personal data erased.

- An individual's right to erasure is particularly relevant if they gave their consent to processing when they were a child.

We must also be mindful that if a parent or guardian gives consent for the child, they have the right to withdraw that consent when they are able to provide consent for themselves.

Withdrawal of consent.

If a data subject enacts their right to withdraw consent, their personal information *which relied on consent* must be deleted subject to retention schedule.

Appendix

Appendix A – Consent Checklist

Asking for consent

- We have checked that consent is the most appropriate lawful basis for processing.
- We have made the request for consent prominent and separate from our terms and conditions.
- We ask people to positively opt in.
- We don't use pre-ticked boxes, or any other consent by default.
- We use clear, plain language that is easy to understand.
- We specify why we want the data and what we're going to do with it.
- We have named CCBC and any third party who will be relying on the consent.
- We tell individuals they can withdraw their consent and how.
- We ensure that the individual can refuse to consent without detriment.
- We don't make consent a precondition of a service.
- If we offer online services directly to children, we only seek consent if we have age-verification and parental consent measures in place.

Recording consent

- We keep a record of when and how we got consent from the individual.
- We keep a record of exactly what they were told at the time.

Managing Consent

- We regularly review consents to check that the relationship, the processing and the purposes have not changed.
- We have processes in place to refresh consent at appropriate intervals, including any parental consent.
- We make it easy for individuals to withdraw their consent at any time, and publicise how to do so.
- We have written procedures in place for when consent is withdrawn.
- We act on withdrawals of consent immediately.
- We don't penalise individuals who wish to withdraw consent.

Our full title and address for sending requests for any documents is:

**Ysgol St George
Primrose Hill
St George
Abergele
LL22 9BU**

The person responsible for maintenance of this scheme is:

Mrs Sian Wilkinson (Headteacher)

Introduction: what a publication scheme is and why it has been developed

One of the aims of the Freedom of Information Act 2000 (which is referred to as FoIA in the rest of this document) is that public authorities, including all maintained schools, should be clear and proactive about the information they will make public.

To do this we must produce a publication scheme, setting out:

- *The classes of information which we publish or intend to publish;*
- *The manner in which the information will be published; and*
- *Whether the information is available free of charge or on payment.*

The scheme covers information already published and information which is to be published in the future. All information in our publication scheme is available for you on our website to download and print off or is available in paper form by request at school.

Some information which we hold may **not** be made public, for example personal information.

This publication scheme conforms to the model scheme for schools approved by the Information Commissioner.

Categories of information published

The publication scheme guides you to information which we currently publish (or have recently published) or which we will publish in the future - this is split into categories of information known as 'classes'. These are contained in section 5 of this scheme.

The classes of information that we undertake to make available are organised into four broad topic areas:

- **School Prospectus** - information published in the school prospectus.
- **Governors' Documents** - information published in the Governors' Annual Report and in other governing body documents.
- **Pupils & Curriculum** - information about policies that relate to pupils and the school curriculum.
- **School Policies** - information about policies that relate to the school in general.

How to request information

You can request a copy of the information you want from the contact detailed below.

If the information you're looking for isn't available via the scheme **[and isn't on our website]**, you can still ask if we have it. You can contact the school by telephone, email or letter.

Email: swyddfa@stgeorge.conwy.sch.uk

Tel: **01745 833213**

**Ysgol St George
Primrose Hill
St George
Abergele
LL22 9BU**

To help us process your request quickly, please clearly mark any correspondence "**PUBLICATIONS SCHEME REQUEST**" (in **bold CAPITALS**).

Paying for information

Single copies of information covered by this publication scheme are provided free unless stated otherwise. If your request means that we have to do a lot of photocopying or printing, or pay a large postage charge, or is for a priced item such as some printed publications or videos, we will let you know the cost before fulfilling your request. Where there is a charge for a particular item this is indicated in the boxes in Section 5 by a £ sign following the description of the item.

Information published on our website is free, although you may incur costs from your Internet service provider. If you don't have Internet access, you can access our website using a local library or an Internet café.

Classes of Information Currently Published

School Prospectus - this section sets out information published in the school prospectus.

| Class | Description |
|--------------------------|--|
| School Prospectus | <p>The statutory contents of the school prospectus are as follows, (other items may be included at the school's discretion):</p> <ul style="list-style-type: none"> • the name, address and telephone number of the school, and the type of school. • the names of the headteacher and chair of governors. • information about admissions. • a statement of the school's ethos and values. • details of any affiliations with a particular religion or religious denomination, the religious education provided, parents' right to withdraw their child from religious education and collective worship and the alternative provision for those pupils. • information about the school's policy on providing for pupils with special educational needs. • number of pupils on roll and rates of pupils' authorised and unauthorised absences. • Use of the Welsh Language. |

Governors' Annual Report and other information relating to the governing body - this section sets out information published in the Governors Annual Report and in other Governing Body documents.

| Class | Description |
|---------------------------------|---|
| Governors' Annual Report | <p>The statutory contents of the governors' annual report to parents are as follows, (other items may be included at the school's discretion):</p> <ul style="list-style-type: none"> • details of the governing body membership, including name and address of chair and clerk. • a statement on progress in implementing the action plan drawn up following an inspection. • a financial statement, including gifts made to the school and amounts paid to governors for expenses. • information about school security. • information about the implementation of the governing body's policy on pupils with Additional Learning needs (ALN) and any changes to the policy during the last year. • a description of the arrangements for the admission of pupils with disabilities; details of steps to prevent disabled pupils being treated less favourably than other pupils; and details of existing facilities to assist access to the school by pupils with disabilities. • the accessibility plan covering future policies for increasing access by those with disabilities to the school |

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| | <ul style="list-style-type: none"> • how teachers' professional development impacts on teaching and learning. • number of pupils on roll and rates of pupils' authorised and unauthorised absence. |
| Instrument of Government | <ul style="list-style-type: none"> • The name of the school. • The category of the school. • The name of the governing body. • The manner in which the governing body is constituted. • The name of any person entitled to appoint any category of governor. • Details of any trust. • If the school has a religious character, a description of the ethos of the school. • The date the instrument takes effect. |
| Minutes of meeting of the Governing Body and its committees | Minutes from governing body and committee meetings |

Pupils & Curriculum Policies - this section gives access to information about policies that relate to pupils and the school curriculum.

| Class | Description |
|---|--|
| Home - school agreement | Written statement of the school's aims and values, the school's responsibilities, the parental responsibilities and the school's expectations of its pupils for example homework arrangements. |
| Curriculum Policy | Statement on following the policy for national curriculum subjects, including any syllabus followed by pupils at the school. |
| Relationships and Sexuality Policy | Written statement of policy with regard to sex education. |
| Collective Worship | Statement of arrangements for the required daily act of collective worship. |
| Behaviour & Wellbeing Policy | Written statement of general principles on behaviour and discipline including any anti bullying policy as appropriate. |

School Policies - This section gives access to information about policies that relate to the school in general.

| Class | Description |
|--|---|
| Reports of Estyn School Inspections under Sections 10 and 23 of the School Inspections Act 1996 | Report of an inspection of the school and the summary of the report. |
| Post Inspection action plan | A plan setting out the actions required following an Estyn inspection. |
| Charging policy | A statement of the school's policy with respect to charges and remissions for any optional extra or board and lodging of which charges are permitted, for example music tuition, trips. |
| School session times | Details of school session and dates of school terms and holidays. |
| Additional Learning Needs | Information about the school's policy on providing for pupils with special educational needs. |
| Accessibility Plans | Written plan of improvements to access for pupils with disabilities. |
| Health and Safety Policy | Written statement of general policy with respect to health and safety at work of employees (and others) and the organisation and arrangements for carrying out the policy. |

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|--|--|
| Child Protection Policy | Statement of general principles on Child Protection arrangements. |
| Complaints procedure | Statement of procedures for dealing with complaints. |
| Staff Appraisal | Statement of procedures adopted by the governing body relating to staff appraisal. |
| Staff Conduct, Discipline and Grievance | Statement of procedure for regulating conduct and discipline of school staff and procedures by which staff may seek redress for grievance. |

Feedback and Complaints

We welcome any comments or suggestions you may have about the scheme. If you want to make any comments about this publication scheme or if you require further assistance or need to make a complaint then initially this should be addressed to

Mrs Sian Wilkinson (Headteacher)
Ysgol St George
Primrose Hill
St George
Abergele
LL22 9BU

If you are not satisfied with the assistance that you get or if we have not been able to resolve your complaint and you feel that a formal complaint needs to be made then this should be addressed to the Information Commissioner's Office. This is the organisation that ensures compliance with the Freedom of Information Act 2000 and that deals with formal complaints. They can be contacted at:

Information Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

or

Enquiry/Information Line: 01625 545 745
E-mail: publications@ic-foi.demon.co.uk

Some information might be confidential or otherwise exempt from the publication by law - we cannot therefore publish this