



Advice on the General Data Protection Regulation and primary school health data collections

This letter provides advice on the lawful basis under the General Data Protection Regulation (GDPR) for children's personal information to be used for height and weight measurements, dental surveys, vaccinations, and vision and hearing screening in primary schools.

The key message is that **no change** is needed to the current ways in which children's personal information is used and shared for these primary school health data collections to be lawful under the GDPR.

GDPR and the lawful basis for the primary school health data collections

The GDPR became UK law on 25 May 2018. It updates and strengthens the ways in which personal data is protected¹. The GDPR is an evolution in data protection legislation rather than a revolution.

All processing of personal data – meaning all aspects of the collection, use and sharing of personal data about identifiable individuals² – must have a lawful basis under the GDPR. Article 6 of the GDPR sets out the range of purposes for which personal data can be lawfully processed. Article 9 sets out the associated conditions for the lawful processing of 'special categories' of personal data, including data about health.

Consent is one of the lawful bases for processing personal data under the GDPR but is not the lawful basis for the primary school health data collections. Instead, this is provided by varying combinations of the GDPR Articles that cover:

- compliance with a legal obligation
- the exercise of official authority
- provision of health care or treatment
- public interest in the area of public health

¹ For further information on the GDPR can be found on the Information Commissioner's Office website: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr>

² <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/key-definitions/>

No change is needed to the current ways in which parents are informed of the primary school health data collections for these to be lawful under the GDPR.

A more detailed explanation for each of the collections is provided below.

1. GDPR and child height and weight measurements

All Local Authorities in England are required to collect information on the height and weight of Reception and Year 6 school children as part of the National Child Measurement Programme (NCMP).

The NCMP data is used locally to inform the planning and delivery of health improvement services for children, and nationally to monitor trends in child obesity and overweight and support local public health initiatives.

The official authority for the NCMP is provided by The Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013³ and The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013⁴. This official authority means that the lawful basis for processing children's personal data for this purpose is considered to be provided by:

- GDPR Article 6(1)(c) - processing is necessary for compliance with a legal obligation
- GDPR Article 6(1)(e) - processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority
- GDPR Article 9(2)(h) - processing is necessary for medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems

Informing parents

The NCMP Regulations state that parents must be provided with the opportunity to withdraw their children from participation in the height and weight measurements.

No change is required to the way in which parents or persons with parental responsibility are provided with this opportunity for the 2018/19 school year onwards. Schools should continue to use the template information letter provided by Public Health England to inform parents that they can withdraw their children from the measurements⁵.

³ <http://www.legislation.gov.uk/ukxi/2013/351/contents/made>

⁴ <http://www.legislation.gov.uk/ukxi/2013/218/contents/made>

⁵ The NCMP operational guidance and parental information letter template can be found at <https://www.gov.uk/government/publications/national-child-measurement-programme-operational-guidance>

The NCMP Regulations also state that children's personal data can be shared by schools with the Local Authority or those working on behalf of the Local Authority to carry out the height and weight measurements⁶. This sharing continues to be lawful under the GDPR.

2. GDPR and dental health surveys

All Local Authorities in England are required to undertake dental surveys as part of a programme to help improve the dental health of people in their area.

The official authority for dental health surveys is provided by The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012⁷. This official authority means that the lawful basis for processing children's personal data for this purpose is considered to be provided by:

- GDPR Article 6(1)(c) - processing is necessary for compliance with a legal obligation
- GDPR Article 6(1)(e) - processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority
- GDPR Article 9(2)(h) - processing is necessary for medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems

Informing parents

Guidance on the management of dental surveys of five year old children in primary schools is published by Public Health England⁸.

Dental surveys involve a physical examination so the guidance states that the written agreement of parents or persons with parental responsibility must be obtained for their children to be included in a survey.

No change is required to the way in which this written agreement is obtained. Primary schools should continue to use the template information letter and agreement form provided by Public Health England.

Only children for whom parental agreement has been received should be included in a survey.

3. GDPR and vaccinations

The Secretary of State for Health & Social Care is required to take steps to protect the public from disease. This includes providing vaccination services. This specific responsibility is fulfilled by NHS England, which works with Local Authorities to vaccinate children in primary schools.

⁶ Section 10 of The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (<http://www.legislation.gov.uk/ukxi/2013/218/contents/made>)

⁷ <http://www.legislation.gov.uk/ukxi/2012/3094/contents/made>

⁸ The national protocol for the 2016/17 survey of five year old children can be found at [http://www.nwph.net/dentalhealth/survey-results%205\(16_17\).aspx](http://www.nwph.net/dentalhealth/survey-results%205(16_17).aspx)

The official authority for the vaccination for primary school children is provided by the Health & Social Care Act 2012⁹. This official authority means that the lawful basis for processing children's personal data for this purpose is considered to be provided by:

- GDPR Article 6(1)(e) - processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority
- GDPR Article 9(2)(h) - processing is necessary for medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems
- GDPR Article 9(2)(i) - processing is necessary for reasons of public interest in the area of public health

Informing parents

Guidance on the administration of vaccinations is published by Public Health England¹⁰.

This guidance states that the agreement of parents or persons with parental responsibility must be obtained before a vaccine is administered to children in primary schools.

No change is required to the way in which this agreement is obtained. Schools should continue to work with the healthcare teams providing vaccinations in schools, and use the template information letter and parental agreement form provided by Public Health England¹¹.

Only children for whom parental agreement has been received should be vaccinated.

4. GDPR and vision and hearing screening

The Secretary of State for Health & Social Care is required to take steps to protect the public from disease. This includes providing screening services. Specific responsibility for the different screening programmes varies but for vision and hearing screening of children in primary schools it is fulfilled by Local Authorities with the support of Public Health England.

The official authority for vision and hearing screening is provided by the Health & Social Care Act 2012¹². This official authority means that the lawful basis for processing children's personal data for this purpose is considered to be provided by:

- GDPR Article 6(1)(e) - processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority

⁹ <http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted>

¹⁰ <https://www.gov.uk/government/collections/immunisation>

¹¹ <https://www.gov.uk/government/publications/flu-vaccination-in-schools>

¹² <http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted>

- GDPR Article 9(2)(h) - processing is necessary for medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems

Informing parents

Guidance on the administration of vision screening is published by Public Health England¹³.

This guidance states that Local Authorities can decide whether to adopt an 'opt in' or 'opt out' approach. An 'opt in' approach is where children are screened only if the written agreement of parents or persons with parental responsibility has been obtained. An 'opt out' approach is where all children are screened except those whose parents or persons with parental responsibility have withdrawn their children from the screening.

Both approaches to administering vision screening are equally valid under the GDPR. This is because the lawful basis for processing children's personal data for this purpose is provided by the Articles covering 'exercise of official authority' and 'provision of health care or treatment', not by consent.

No change is required from previous years to the way in which vision and hearing screening is administered. Schools should continue to work with the healthcare teams providing screening services, and follow the guidance published by Public Health England.

Summary

No change is needed to the current ways in which children's personal information is used and shared for the primary school health data collections to be lawful under the GDPR.

The lawful basis under the GDPR for the height and weight measurements, dental surveys, vaccinations, and vision and hearing screening of children in primary schools is not provided by consent – it is provided by varying combinations of 'compliance with a legal obligation', 'exercise of official authority', 'the provision of health care or treatment', and 'public interest in the area of public health'.

However, parents or persons with parental responsibility must still be provided with the opportunity to withdraw their children from the height and weight measurements.

Their written agreement must also be obtained for children to be included in a dental survey or to be vaccinated in primary schools.

Finally, for vision and hearing screening, parents or persons with parental responsibility must either be provided with the opportunity to agree to the screening or informed that they can withdraw their children.

Further information

Any questions regarding this advice can be directed to Public Health England.

¹³ <https://www.gov.uk/government/publications/child-vision-screening/service-specification>

ICO determination regarding Public Health England

Satswana Ltd. sought clarification on the position of schools on the provision of data to the NHS. The decision is reproduced in full below.

03 January 2019

ICO Case Reference Number RFA0789669

ICO Case Worker: Alice Arnott

I write in relation to the concern you have raised about Public Health England (PHE).

Our role

We want to know how organisations are doing when they are handling your personal information.

If we think the organisation has not complied with their obligations under the data protection law we oversee we can give them advice and ask them to solve the problem. Our main aim is to improve the information rights practices of organisations, where there is an opportunity for us to do so.

Before reporting a concern to us, we expect you to give the organisation the opportunity to consider it first. In order for us to look at their information rights practices we need you to provide us with their reply.

Your concerns

I understand you are concerned about the lawful bases for processing of school children's personal data. You have explained that you are concerned about height and weight measurements, vaccinations and dental surveys and how information collected is shared with local authority providers such as the school nursing services.

Our view

You have raised your concerns with PHE and it appears they have provided you with a number of in depth responses.

Based on the responses you have received I am satisfied that the information you have been provided with does not suggest any concerns about PHE and their understanding of their obligations under the General Data Protection Regulation (GDPR).

PHE have advised that their lawful bases for processing information are:

- Article 6(1)(e)
- Article 9(2)(h)
- Article 9(2)(i)

Firstly, I feel I should emphasise that no single basis is "better" or more important than the others – the most appropriate basis to use will depend on your purpose for processing. As such consent is not always the most appropriate basis for organisations. For further

information on the lawful basis for processing please visit: <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/>

I feel it is important that I reiterate advice provided to you by PHE that there is a difference between consent as a basis for processing under GDPR and parental consent for carrying out a medical procedure. As PHE have explained to you, they do ask parents to provide consent for a vaccination to be administered, however this is consent for a medical procedure and not for processing the data. They are relying on the articles listed above as their bases for lawful processing.

For further information you may wish to visit our website, specifically the information under the heading "Do we need consent to process personal data for our patient care functions?": <https://ico.org.uk/for-organisations/health/health-gdpr-faqs/>

Furthermore PHE have explained that with regards to height and weight measurements, although consent is not the basis for processing this information, parents are given the opportunity to withdraw their children from the measurements. This is because although this is a nationally adopted scheme, parents have the option for their children's data to not be included in this collection. As such the basis for processing which they have provided appears to be sufficient.

Finally, PHE have advised that they have obligations under a variety of legislation in addition to the GDPR. They have requirements to fulfil under this additional legislation such as the NHS Act, which we do not regulate. I note that they provided you with appropriate links to this legislation as further guidance.

Therefore, as explained previously we do not have any concerns regarding the bases for processing information by PHE under the GDPR. I hope that this correspondence provides you with sufficient information and guidance. If you have any further queries please do not hesitate to contact me.