

20 August 2018

Directors of Public Health

Dear Colleague

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 and vaccinations 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:

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/>

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

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

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

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

continue to use the template information letter provided by Public Health England to inform parents that they can withdraw their children from the measurements⁵.

The NCMP Regulations also state that children's personal data can be shared by schools with the Local Authority or those working on behalf by 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 of work 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 among 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

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>

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

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.

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 and vaccinations 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', 'medical diagnosis or 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

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>

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

Please feel free to share the contents of this letter to inform discussions with local organisations.

A handwritten signature in black ink that reads "Alison Barnett". The signature is written in a cursive style with a long, sweeping tail on the letter 't'.

Alison Barnett
Interim Centre Director