

Policy Statement on the Use of Applicant and Student Special Category Personal Data and Criminal Records

Approved by:
Information Governance
Group

Effective Date:
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Statement of the Purpose of the Policy Statement

As part of the University's statutory and corporate functions, we process special category data and criminal offence data about applicants and students.

We do this in accordance with the requirements of Article 9 and 10 of the General Data Protection Regulation ('GDPR') and Schedule 1 of the Data Protection Act 2018 ('DPA 2018').

Some of the Schedule 1 conditions for processing special category and criminal offence data require us to have an Appropriate Policy Document in place.

This Policy Document explains our processing of special category and criminal offence data relating to students. There is a parallel Policy Document that explains the processing relating to staff.

Purpose of the Policy Statement

This Policy Document sets out how we process special category and criminal offence data. In the Policy Document we explain how and why we process special category and criminal offence data. We explain the legal basis. We set out the way we comply with the data protection principles.

Who needs to know about the policy?

- Senior Management Team Members
- Heads of School and Department
- Managers, supervisors and staff who are responsible for processing special category data and criminal records data
- Students

Contacts

Governance and Legal Services is responsible for providing advice and guidance on the legal basis for processing special category data and criminal records data and the application of the policy. The Policy is overseen by the University Data Protection Officer [e-mail: dp.officer@canterbury.ac.uk].

For advice and assistance, you can contact the Information Governance Manager [e-mail: information.goverance@canterbury.ac.uk].

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Introduction

Purpose

Under the General Data Protection Regulation (GDPR) and Data Protection Act 2018, the University is to ensure additional protections for processing special categories of personal data and criminal records data.

This policy sets out our approach to processing special category personal data and criminal records data for applicants and students, including those acting in a volunteer capacity. It supplements our [Data Protection Policy](#) and the [Student Privacy Notice](#).

This policy satisfies the requirements of Data Protection Act 2018 Schedule 1, Part 4 and is therefore an appropriate policy document in support of our compliance with the requirements of Articles 9 and 10 GDPR.

Definitions

"Special category personal data" is defined at Article 9 GDPR as personal data revealing:

- Racial or ethnic origin
- Political opinions
- Religious or philosophical beliefs
- Trade union membership
- Genetic data
- Biometric data for uniquely identifying a natural person
- Data concerning health, or
- Data concerning a natural person's sex life or sexual orientation

"Criminal records data" means information about an individual's criminal convictions and offences, and information relating to criminal allegations and proceedings.

"Regulated activity" refers to certain roles carried out by applicants in relation to [children](#) and [specified groups of adults](#). It covers various types of activities which, by their nature, would entitle an individual to an enhanced DBS check with applicable barred lists.

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"Regulated Professions" refers to those professions where there is a regulatory requirement to register with a competent authority prior to practising that profession.

Why the University needs a Policy on the use of Special Category Personal Data and Criminal Records Data

We process special categories of personal data under the following GDPR Articles:

Substantial public interest

Under Article 9 (2) (g), the University may process special category and criminal conviction data where it is necessary for reasons of substantial public interest.

Employment, social care and social protection

Under Article 9 (2) (b), the University may process special category data and criminal convictions where it is necessary for purposes of carrying out obligations and exercising specific rights of the controller or data subject in the field of employment, social security and social protection law.

Archiving for Scientific or historical Research and Statistical purposes

Under Article 9 (2) (j), the University may process special category data and criminal convictions where it is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1).

Establishment, exercise or defence of legal claims

Under Article 9(2)(f) the University may process special category data and criminal convictions for the establishment, exercise or defence of legal claims. Examples of our processing include processing relating to any employment tribunal or other litigation.

Consent

Under Article 9(2)(a) we may process data with the explicit consent of the data subject.

In circumstances where we seek consent, we make sure that the consent is unambiguous and for one or more specified purposes, is given by an affirmative action and is recorded as the condition for processing.

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Vital interests

Under Article 9(2)(c) we may process data where processing is necessary to protect the vital interests of the data subject or of another natural person. This processing takes place in 'life and death' situations.

Policy Statement to meet requirements of Data Protection Act 2018 Schedule 1

The Data Protection Act 2018 s. 10 (3) sets out that the processing meets the requirement in point (g) only if it meets a condition (or purpose) in Part 2 of Schedule 1.

The Data Protection Act 2018 Schedule 1 paragraph 39 requires an appropriate policy document be in place where the processing of special category personal data is necessary for reasons of substantial public interest. The specific conditions under which data may be processed for reasons of substantial public interest are set out at paragraphs 6 to 28 of Schedule 1.

The Data Protection Act 2018 Schedule 1 paragraph 39 requires an appropriate policy document be in place for the processing of criminal convictions data. The specific conditions under which data may be processed for reasons of substantial public interest are set out at paragraph 36 of Schedule 1.

Why the University processes special category personal data and criminal records data

We process special category personal data and criminal records data for the following purposes.

Equal opportunities monitoring

Data related to special categories are processed for equal opportunities monitoring purposes. This is to enable all our students to have access to relevant University facilities at every stage of their educational journey, including the pre-registration phase. The university will monitor the outcomes for all our students and adapt provision where necessary.

Health

Data related to health (including information on whether an individual has a disability) is processed to:

- ensure the University complies with obligations for safeguarding where students are preparing for the regulated professions or will engage in regulated activities;
- assess whether a student is fit to enter a placement or fit to study;
- carry out appropriate capability procedures if a student is not fit to enter a placement;
- support students with a medical condition; and
- ensure the University is inclusive and can promote the success and wellbeing of all.

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Racial or ethnic origin

Information can infer a person's ethnicity from their nationality. Data related to data subjects' nationality is processed to ensure the University complies with its obligations to check that a student is entitled to study in the UK.

Criminal records data

Criminal records data is processed as part of recruitment processes for training for regulated professions and, where necessary, while studying to verify that students are suitable to engage or continue to engage in regulated activities.

Processing of criminal records data is also undertaken to ensure the safeguarding of students in University managed student accommodation.

Additional special category processing

We process special category personal data in other instances where it is not a requirement to keep an appropriate policy document. Our processing of such data respects the rights and interests of the data subjects. We provide clear and transparent information about why we process personal data including our lawful basis for processing in our student privacy notice.

How the University complies with the data protection principles

Accountability principle

We have put in place appropriate technical and organisational measures to meet the requirements of accountability. These include:

- the appointment of a data protection officer
- taking a 'data protection by design and default' approach to our activities.
- maintaining documentation of our processing activities.
- adopting and implementing data protection policies and ensuring we have written contracts in place with our data processors.
- implementing appropriate security measures in relation to the personal data we process.
- carrying out data protection privacy impact assessments for our high-risk processing.

We review our accountability measures and update or amend them when required.

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Procedures for ensuring compliance with the principles

The University processes special category personal data and criminal records data in accordance with the following data protection principles.

(1) The University processes personal data lawfully, fairly and in a transparent manner.

We can process special category personal data only if we have a legal basis for processing and, in addition, one of the specific processing conditions relating to special category personal data, or criminal records data, applies.

Informing Students

The University explains to data subjects how special category personal data and criminal records data is used when it collects the data. This information is set out in the University's Student Privacy Notice.

Consent

In circumstances where we seek consent, we make sure

- The consent is unambiguous
- The consent is given by an affirmative action
- The consent is recorded as the condition for processing

Third Parties

Special category personal data and criminal records data are not disclosed to third parties, except

- (a) in the context of seeking medical advice from the University's occupational health adviser or other medical advisers who are subject to a professional duty of confidentiality. The University complies with the Access to Medical Reports Act 1988 where relevant.
- (b) for making of statutory returns such, as HESA
- (c) where there are grounds established by the Data Protection Act 2018

The University does not use the data for any other purpose.

(2) The University processes personal data for specified, explicit and legitimate purposes.

We process special category personal data and criminal records data for the purposes outlined [above](#) and in compliance with the legal conditions for processing set out in the Annex to this Policy Document.

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As far as possible, information required for equal opportunities monitoring purposes is kept in an anonymised form. Monitoring forms are kept under review to ensure that the information collected is accurate and not excessive.

(3) The University processes personal data only where the data is adequate, relevant and limited to what is necessary for the purposes of processing.

The University collects and retains the minimum amount of information necessary to achieve the purposes outlined above.

The information we process is necessary for and proportionate to our purposes.

As far as possible, the University relies on health questionnaires, rather than medical examination, to obtain necessary information. Any medical examination that is carried out is relevant to the purpose for which it is undertaken and is focused on those working in regulated activities.

Criminal records checks are carried out only for individuals undertaking roles where the University is under a legal obligation or regulatory requirement to perform such checks.

Where personal data is provided to us or obtained by us but is not relevant to our stated purposes, we will erase it.

(4) The University keeps accurate personal data and takes all reasonable steps to ensure that inaccurate personal data is rectified or deleted without delay.

The University takes reasonable steps to ensure the personal data held is accurate. Special category personal data and criminal records data is obtained:

- directly from applicants and other data subjects; or
- from external sources that the University is entitled to assume will provide accurate information, such as UCAS in the case of equality data, the Disclosure and Barring Service in the case of criminal records data, or medical professionals in the case of health data.

The University will erase or rectify inaccurate data that it holds without delay in accordance with our Data Protection Policy where individual notify us it that their personal data has changed or is otherwise inaccurate, or if it is otherwise found to be inaccurate.

If we decide not to either erase or rectify it, for example because the lawful basis we rely on to process the data means these rights don't apply, we will document our decision.

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(5) The University keeps personal data only for the period necessary for processing.

The University retains and processes special category personal data for the duration of a student's study and following completion for the completion of statutory returns in line with the retention schedules.

The University does not retain criminal records data after the commencement of a student's course. It will retain a note on individual student records indicating that a satisfactory criminal records check was completed at the time of registration and re-registration.

At the end of the relevant retention period, the University erases or securely destroys special category personal data and criminal records data.

(6) The University adopts appropriate measures to make sure that personal data is secure and protected against unauthorised or unlawful processing, and accidental loss, destruction or damage.

The University takes the security of special category personal data and criminal records data seriously.

Electronic information is processed within our secure network. Hard copy information is processed within our secure premises.

Our electronic systems and physical storage have appropriate access controls applied

The University has internal policies and controls in place to protect personal data against loss, accidental destruction, misuse or disclosure, and to ensure that data is not accessed, except by employees in the proper performance of their duties.

Review and retention of policy

This policy on processing special category personal data and criminal records data is reviewed periodically. Where necessary, it is amended to ensure it remains up to date and accurately reflects the University's approach to processing such data.

This policy will be retained by the University while special category personal data and criminal records data is being processed and for a period of at least six months after the University stops carrying out such processing.

October 2019

Next review due: October 2021

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Annex

Part A Special Category Data

Legal basis for processing under Parts 1 and 2 of the Data Protection Act 2018 Schedule 1	Special category personal data processing conditions
Monitoring of Equal Opportunities	
Paragraph 8 (1) and (2) – Equality of opportunity or treatment	Processing is not carried out
There is a substantial public interest as the monitoring of equal opportunities allows us to better meet the needs of diversity groups. This enables equal opportunities to be promoted or maintained.	<ul style="list-style-type: none"> (a) for the purposes of measures or decisions with respect to a data subject
Description of Personal Data <ul style="list-style-type: none"> • Personal data revealing racial or ethnic origin • Personal data revealing religious or philosophical beliefs • Data concerning health • Personal data concerning an individual's sexual orientation 	<ul style="list-style-type: none"> (b) if it is likely to cause substantial damage or substantial distress to an individual (c) if an individual who is the data subject gives notice in writing not to process personal data and provides a reasonable period in which to stop processing such data.
Description of Data Subjects	

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<ul style="list-style-type: none"> • People of different racial or ethnic origins • People holding different religious or philosophical beliefs • People with different states of physical or mental health • People of different sexual orientation 	
Making Statutory Returns	
<p>Paragraph 6 (1) and (2) statutory and government purposes</p> <p>Processing is required to statutory returns (e.g. to the Higher Education Statistical Agency (HESA) or the Office for Students (OfS)).</p>	<p>Processing is necessary for the exercise of a function conferred on the University by an enactment or rule of law</p>
<p>Description of Personal Data</p> <ul style="list-style-type: none"> • Personal data revealing racial or ethnic origin • Personal data revealing religious or philosophical beliefs • Data concerning health • Personal data concerning an individual's sexual orientation 	
<p>Description of Data Subjects</p> <ul style="list-style-type: none"> • People of different racial or ethnic origins 	

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<ul style="list-style-type: none"> • People holding different religious or philosophical beliefs • People with different states of physical or mental health • People of different sexual orientation 	
<p>Assessing a student's fitness to undertake placements</p>	
<p><i>Paragraph 2 - Health or social care purposes.</i></p> <p><i>Paragraph 6 (1) and (2) - Statutory and government purposes</i></p> <p>Processing is necessary for compliance with legal obligations (e.g. assessing a student's fitness to undertake placements).</p>	<p>Under paragraph 2, processing is necessary for health or social care purposes related to the assessment of the working capacity of an employee.</p> <p>Under paragraph 6, processing is necessary for the exercise of a function conferred on the University by an enactment or rule of law.</p>
<p>Description of Personal Data</p> <ul style="list-style-type: none"> • Data concerning health <p>Description of Data Subjects</p> <ul style="list-style-type: none"> • Students applying for, accepting a place for or enrolling on a regulated profession programme 	
<p>Support students with a declared disability, engaging with the fit to study process or a particular medical condition</p>	

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<p><i>Paragraph 16 (1), (2) and (3) - Support for individuals with a particular disability or medical condition.</i></p> <p>Processing is necessary for the support of students with a declared disability, engaged with the fit to study process or requiring support for a medical condition.</p>	<p>Processing can reasonably be carried out without the consent of the data subject only where</p> <ol style="list-style-type: none"> 1. the University cannot reasonably be expected to obtain the consent of the data subject, and 2. the University is not aware of the data subject withholding consent.
<p>Description of Personal Data</p> <ul style="list-style-type: none"> • data concerning health; • personal data concerning an individual's sex life or sexual orientation. <p>Description of Data Subjects</p> <ul style="list-style-type: none"> • Students with a declared disability • Students engaged with the fit to study process • Students requiring support for a medical condition 	
<p>Assessing the right to study in the UK</p> <p><i>Paragraph 6 (1) and (2) - Statutory and government purposes</i></p> <p>Processing is necessary for compliance with legal obligations relating to</p>	<p>Processing is necessary for the exercise of a function conferred on the University by an enactment or rule of law.</p>

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<p>checking an applicants' right to study in the UK.</p> <p>Description of Personal Data</p> <ul style="list-style-type: none"> • Personal data revealing racial or ethnic origin <p>Description of Data Subjects</p> <ul style="list-style-type: none"> • People of different racial or ethnic origins 	
<p>Requirement to have due regard to the need to prevent people from being drawn into terrorism</p>	
<p><i>Paragraph 6 (1) and (2) - Statutory and government purposes</i></p> <p>Processing is necessary for compliance with legal obligations relating to the requirement for the University, in the exercise of its functions, to have due regard to the need to prevent people from being drawn into terrorism”.</p> <p>Description of Personal Data</p> <ul style="list-style-type: none"> • Personal data revealing racial or ethnic origin • Personal data revealing religious or philosophical beliefs 	<p>Processing is necessary for the exercise of a function conferred on the University by an enactment or rule of law.</p>

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<ul style="list-style-type: none">• Data concerning health <p>Description of Data Subjects</p> <ul style="list-style-type: none">• People of different racial or ethnic origins• People holding different religious or philosophical beliefs• People with different states of physical or mental health	
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Part B Criminal Records Data

Legal basis for processing under Parts 2 and 3 of the Data Protection Act 2018 Schedule 1	Criminal records data processing conditions
Processing where the person applies for study related to a regulated profession or undertakes study or volunteering requiring engagement in regulated activity	
<i>Paragraph 6 (1) and (2) - Statutory and government purposes</i>	Under paragraph 6, processing is necessary for the exercise of a function conferred on the University by an enactment or rule of law.
Processing is necessary for compliance with legal obligations (i.e. the legal requirement placed on the University to carry out criminal records checks on those working with children or adults).	Under Paragraph 18, Processing is necessary because <ul style="list-style-type: none"> (a) in the circumstances, consent to the processing cannot be given by the data subject; (b) in the circumstances, the University cannot reasonably be expected to obtain the consent of the data subject to the processing; (c) the processing must be carried out without the consent of the data subject because obtaining the consent of the data subject would prejudice the <ul style="list-style-type: none"> • protecting an individual from neglect or physical, mental or emotional harm, or • protecting the physical, mental or emotional well-being of an individual
<i>Paragraph 18 - Safeguarding of children and of individuals at risk</i>	Under paragraph 32, the condition is met if the processing relates to personal data which is manifestly made public by the data subject.
<i>Paragraph 32 - Personal data in the public domain</i>	Under paragraph 36, the condition is met if the processing would meet a condition in Part 2 of
<i>Paragraph 36 - Substantial public interest.</i>	
Description of Data Subjects	
<ul style="list-style-type: none"> • Students who are applying for, accepting a place for or enrolling on a regulated profession programme • Students choosing as part of the programme to undertake regulated activities • Volunteers undertaking regulated activities 	

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	<p>the Schedule but for an express requirement for the processing to be necessary for reasons of substantial public interest.</p>
Processing where the person applies for residential accommodation	
<p><i>Paragraph 10 Preventing or detecting unlawful acts.</i></p> <p>Processing is necessary to prevent students and staff coming to harm through further unlawful acts.</p> <p><i>Paragraph 18 Safeguarding of children and individuals at risk.</i></p> <p>Processing is necessary for the safeguarding students in University managed accommodation, many of whom are relatively young, with some under eighteen years of age on entry.</p> <p><i>Paragraph 32 - Personal data in the public domain</i></p> <p><i>Paragraph 36 - Substantial public interest.</i></p> <p>Description of Data Subjects</p> <ul style="list-style-type: none"> • Students who are applying for, accepting a place for or entering University managed student accommodation 	<p>Under paragraph 10, the condition is met if the processing</p> <p>(a) is necessary for the purposes of the prevention or detection of an unlawful act,</p> <p>(b) must be carried out without the consent of the data subject so as not to prejudice those purposes, and</p> <p>(c) is necessary for reasons of substantial public interest.</p> <p>Under Paragraph 18, Processing is necessary because</p> <p>(a) in the circumstances, consent to the processing cannot be given by the data subject;</p> <p>(b) in the circumstances, the University cannot reasonably be expected to obtain the consent of the data subject to the processing;</p> <p>(c) the processing must be carried out without the consent of the data subject because obtaining the consent of the data subject would prejudice the provision of the protection mentioned in sub-paragraph (1)(a).</p> <p>Under paragraph 32, the condition is met if the processing relates to personal data which is manifestly made public by the data subject.</p> <p>Under paragraph 36, the condition is met if the processing would meet a condition in Part 2 of</p>

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	<p>the Schedule but for an express requirement for the processing to be necessary for reasons of substantial public interest.</p>
Processing where the person is subject to disciplinary action, including fitness to practise	
<p><i>Paragraph 10 Preventing or detecting unlawful acts.</i></p> <p>Processing is necessary to prevent students, staff and others coming to harm through further unlawful acts.</p>	<p>Under paragraph 10, the condition is met if the processing</p> <ul style="list-style-type: none"> (a) is necessary for the purposes of the prevention or detection of an unlawful act, (b) must be carried out without the consent of the data subject so as not to prejudice those purposes, and (c) is necessary for reasons of substantial public interest.
<p><i>Paragraph 32 - Personal data in the public domain</i></p> <p><i>Paragraph 36 - Substantial public interest.</i></p> <p>Description of Data Subjects</p> <ul style="list-style-type: none"> • Students who subject to disciplinary action, including fitness to practise 	<p>Under paragraph 32, the condition is met if the processing relates to personal data which is manifestly made public by the data subject.</p> <p>Under paragraph 36, the condition is met if the processing would meet a condition in Part 2 of the Schedule but for an express requirement for the processing to be necessary for reasons of substantial public interest.</p>

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Department Owner	Governance and Legal Services
Policy Category	Administrative Practice
Policy Owner	University Solicitor
Policy Initiator	Data Protection Officer
Policy Administrator	Information Governance Manager
Responsible Officer	University Solicitor
Approval Body	Information Governance Group
Subject	Data Protection
Related University Policies	Policy Statement on the Use of Staff Special Category Personal Data and Criminal Records
Related University Procedures	<u>Data Protection Policy</u> <u>Student Privacy Notice</u>
Approved by	Information Governance Group
Date Approved	October 2019
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Review Date	October 2021
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