

LEGITIMATE INTERESTS ASSESSMENT - INTRODUCTION

The General Data Protection Regulation (GDPR) requires organisations to identify the basis on which they process personal data. Data controllers (who decide the purposes and means of the processing of personal data) may process and share information on a number of different bases. One of these is consent; another is that they have a **legitimate interest** in doing so¹. When information is gathered and used within and/or for the purposes of the congregation, it is likely to be most often processed on the basis of a legitimate interest, and not on the basis of consent. This basis of processing is likely to be appropriate where data is used in ways which people would reasonably expect, based on their relationship with the data controller, and which have a minimal privacy impact; or where there is a compelling justification for the processing. There are three elements to the legitimate interests basis of processing. It is necessary to:

- identify a legitimate interest;
- show that the processing is necessary to achieve it; and
- balance it against the individual's interests, rights and freedoms.

Data controllers must demonstrate that they have considered the necessity of the processing and balanced this against the rights of the individuals concerned. Processing may only proceed if these rights do not override the interests of the controller. This Legitimate Interests Assessment Form has been produced to help congregations with this process. It provides a number of sample questions and answers which are relevant to satisfying all three elements of the test. Whilst it is hoped that the Form can be adapted and used by congregations for this purpose, it should be remembered that not all of the examples given may be relevant to all situations. You should think carefully about all of the personal information which you process and ensure that all of it is reflected within your Form. **The following Form is for use only where consent is not the basis on which information is processed.**

On completion of the Form, if it is found that the processing of any information is not in fact based on a legitimate interest (or one of the GDPR exemptions for processing) you should seek advice from the Law Department by emailing: LAWDEPT@churchofscotland.org.uk and referencing "Legitimate Interests Assessment" as the subject.

Congregations must also ensure that they have Privacy Notices available to those whose information is being processed. Guidance on Privacy Notices can be found on the Church of Scotland website under "Resources" and "Law Department Circulars".

¹ GDPR recitals 40 through 55 and Articles 6 (1)(f) and 9(2)(d)

Kirkliston Parish Church

Legitimate Interests Assessment Form

[Insert date]

This form should be completed and signed on behalf of the congregation and held on file in order to evidence the basis on which information is processed. The assessment should be reviewed in the event of a new processing activity or, where there is no change to processing, annually.

Additional guidance on data protection is available from the Church of Scotland website at this link: http://www.churchofscotland.org.uk/resources/law_circulars#data_protection.

A) IDENTIFYING A LEGITIMATE INTEREST			
	Question	Answer	Guidance
1	What is the processing operation?	The collation and use of personal information including names, contact details and bank details of members of the congregation and those in contact with it. Information pertaining to former members of the congregation is also retained for a time in order to restore contact should that be desired. Such information is obtained directly from individuals or from sources within the Church of Scotland and may also be supplied by third parties, for example in connection with safeguarding.	This section provides detail about what personal information is being obtained, held and used. It also identifies that data may be held on supplementary rolls. Information on supplementary rolls should be reviewed at least every 5 years and unless there is a legitimate interest in maintaining the data on a supplementary roll it should be removed.

A) IDENTIFYING A LEGITIMATE INTEREST

	Question	Answer	Guidance
2	What is the purpose of the processing operation?	Information is processed for the legitimate interests of the congregation, including but not limited to pastoral activities; charitable purposes; the provision of care or services; employment matters; safeguarding; legal requirements; for the performance of a contract; or to meet legal obligations. All of these purposes are in line with the reasonable expectations of the individual when engaging with the congregation.	
3	Is the processing necessary to meet one or more specific organisational objectives?	Yes. The processing is necessary for the proper administration and facilitation of congregational activities; for the purposes of communication and updates; the provision of pastoral care; and the advancement of religion.	
4	Is the processing necessary to meet one or more specific objectives of any Third Party?	No. Where necessary, such as for the distribution of communications, third parties may also have a legitimate interest in processing the data but that will not be the primary specific objective of any third party.	While you may only need to identify one legitimate interest – the interest that you are seeking to rely on - it is useful to list all apparent interests in the processing.

A) IDENTIFYING A LEGITIMATE INTEREST

	Question	Answer	Guidance
5	What Third Parties are provided with personal data and why?	Where necessary, such as for the distribution of communications or arranging events, third parties may also have a legitimate interest in processing the data but that will not be the primary specific objective of any third party.	
6	Does the GDPR, ePrivacy Regulation or other national legislation specifically identify the processing activity as being a legitimate activity, subject to the completion of a balancing test and positive outcome?	Yes. The legislation applicable to processing carried out in the legitimate interests of the Church of Scotland includes: GDPR Recitals 45; 47; 48; 49; 50; 52; 53; and 55; and GDPR Articles 6 and 9.	

B) The Necessity Test

	Question	Answer	Guidance
1	Why is the processing activity important?	Processing such data allows the congregation to ensure that those in contact with it may safely engage with the life of the Church, receive updates and have access to services and information relevant to their requirements.	
2	Why is the processing activity important to other parties the data may be disclosed to, if applicable?	The data may be disclosed by the congregation to other parties within the Church of Scotland for the benefit of its members and those in contact with the Church; as a means to fulfill its legitimate aims and, where necessary, with third parties, for example: for the distribution of communications; for the provision of care and services; for the performance of contracts; for property related matters and for compliance with legal obligations.	

B) The Necessity Test

	Question	Answer	Guidance
3	Is there another way of achieving the objective?	No. The overarching objective of the Church of Scotland is the advancement of religion and to share in the fellowship of Christ. Holding information and using it for communication across the Church, and where necessary communication with third parties, for the provision of services, information and resources to members and to those in contact with the Church, for a wide variety of purposes, is critical in meeting that objective and allowing the Church to function as a religious organisation. It is impractical for the congregation to obtain explicit opt-in consent from every person to the processing of their personal data.	

C) THE BALANCING TEST

	Question	Answer	Guidance
1	Would the individual expect the processing activity to take place?	Yes. Those in contact with congregations of the Church of Scotland have a reasonable expectation that their personal information will be processed by the Church in order to facilitate their membership of, or contact with, the Church of Scotland.	If individuals would expect the processing to take place then the impact on the individual is likely to have already been considered by them and accepted.
2	Does the processing add value to a product or service that the individual uses?	N/A	Congregations are not in the business of offering a product or commercial service.
3	Is the processing likely to negatively impact the individual's rights?	No	Will the individual suffer any detriment as a result of their personal information being used by the congregation? It is anticipated that the answer to this question will be "No".
4	Is the processing likely to result in unwarranted harm or distress to the Individual?	No	

C) THE BALANCING TEST

	Question	Answer	Guidance
5	Would there be a prejudice to the Data Controller if processing does not happen?	Yes. Congregations of the Church of Scotland and the Church as a whole would not be able to function effectively as a religious organisation without processing individuals' data.	What happens if the data is not processed?
6	Would there be a prejudice to the Third Party if processing does not happen?	Yes, in some circumstances. The congregation only shares information with third parties where necessary for the distribution of communications; as required to meet legal obligations; for the provision of care and services; and for the legitimate operation of the church as a religious organisation in line with the reasonable expectations of the data subject. There would be prejudice, for example, to vulnerable people if the congregation was not able to share information with the statutory authorities and the Church's Safeguarding Service where concerns arise.	

C) THE BALANCING TEST

	Question	Answer	Guidance
7	Is the processing in the interests of the individual whose personal data it relates to?	Yes. The congregation is a voluntary association and all those joining or associating with it are doing so on a voluntary basis. The processing enables such individuals to be kept informed about congregational activities and allows targeted care and support to be provided to those who may need it because of infirmity or illness.	
8	Are the legitimate interests of the individual aligned with the party looking to rely on their legitimate interests for the processing?	Yes. Those in contact with the congregation have made a choice to have that contact. Both the data subjects and the data processor are part of the same voluntary association and have the same charitable purpose in view, namely the advancement of religion. This principle also applies to former members of the Church of Scotland who may, for a time, remain on supplementary rolls in accordance with Church law. Accordingly the legitimate interests of the individual are aligned with the legitimate interests of the Church of Scotland.	

C) THE BALANCING TEST

	Question	Answer	Guidance
9	What is the connection between the data subject(s) and the organisation?	<p>In this context, data subjects include:</p> <ul style="list-style-type: none">• Current and former members of the congregation• Individuals attending worship, including children• Individuals involved in using church premises, including children• Employees, office-holders, volunteers and contractors• Suppliers• Adherents and those in contact with the Church with the common purpose of the advancement of religion• Those in contact with the Church in connection with property related matters	The aim of this section is to clarify the relationship between the congregation and those whose information the congregation might use.

C) THE BALANCING TEST

	Question	Answer	Guidance
10	What is the nature of the data to be processed? Does data of this nature have any special protection under GDPR?	The congregation processes information including names, contact details, bank details and images. Much if not all of this data is special category personal data because it by implication discloses a person's religious beliefs. It will also include data concerning health; safeguarding issues; and children's data.	<p>If processing special categories of personal data, a GDPR Article 9 condition must be identified as the lawful basis of processing.</p> <p>In the case of the Church of Scotland the relevant exemption is found at Article 9 (2) (d).</p> <p>Please note that permission should be sought from a parent/guardian when processing information relating to anyone under the age of 18.</p>

C) THE BALANCING TEST

	Question	Answer	Guidance
11	Is there a two-way relationship in place between the organisation and the data subject(s)? If so how close is that relationship?	Yes. The organisation exists only through its members and adherents and all personal data processed for the legitimate activities of the congregation will foster that two-way relationship.	Where there is an ongoing relationship, there is a greater expectation on the part of the data subjects that their information will be processed by the organisation. Accordingly, data should be reviewed and unless there is a legitimate reason to keep it (this includes supplementary rolls) it should be appropriately disposed of.
12	Would the processing limit or undermine the rights of individuals?	No.	Will the individuals suffer any detriment by their personal information being used?

C) THE BALANCING TEST

	Question	Answer	Guidance
13	Has the personal information been obtained directly from the data subject(s), or obtained indirectly?	A mix of both. Personal information is generally obtained by the congregation direct from data subjects unless the data subject lacks capacity to provide that information themselves. Information is also provided to the congregation indirectly for example by statutory agencies for safeguarding purposes or by other churches, or by the broader Church of Scotland, in pursuit of the legitimate interests of the Church of Scotland as a religious organisation.	
14	Is there any imbalance in who holds the power between the organisation and the individual?	No. Data subjects are for the most part in contact with the congregation on a voluntary basis and in pursuit of a common goal namely the advancement of religion. The congregation has a privacy notice explaining what information is held, what is done with it and the legal basis on which it is used and that individuals may object to their data being processed.	This section notes that privacy notices must be available to data subjects. Privacy notices are available from the Church of Scotland website under the "Resources/Law Department Circulars/Data Protection" tabs.

C) THE BALANCING TEST

	Question	Answer	Guidance
15	Is it likely that individuals may expect their information to be used for the purposes outlined in your privacy notice and in this legitimate interest assessment?	Yes. Individuals in contact with the congregation would reasonably expect that it is necessary for the congregation and the Church of Scotland to hold information and use it for communication across the Church, and where necessary communicate with third parties for: the provision of services; administration information; and resources for members and to those in contact with the Church, for a wide variety of purposes. Those in contact with the congregation have a reasonable expectation that this processing is necessary to meet the legitimate objectives of the Church, allowing the Church to function as a religious organisation and providing services to the broader community, in particular the parish which the congregation serves.	

C) THE BALANCING TEST

	Question	Answer	Guidance
16	Could the processing be considered intrusive or inappropriate?	No, because it is in line with the reasonable expectations of the data subjects.	<p>It should be borne in mind that using personal information should not be an intrusion into the private life of an individual.</p> <p>If a member of the congregation is in poor health it would be appropriate to mention them in intimations and prayers but it would not be appropriate to circulate details of their illness without their explicit permission.</p> <p>Permission must be sought from parents/guardians if any information being shared relates to children.</p>

C) THE BALANCING TEST

	Question	Answer	Guidance
17	If the processing might be intrusive are there any steps that can be taken to address that, such as seeking permission from the data subject(s)?	N/A	
18	Is a privacy notice made available to the individual, if so, how? Are they sufficiently clear and up front regarding the purposes of the processing?	<p>Yes. Privacy notices are provided to individuals when they become a member of the congregation, are available from the congregation's website and are posted on the congregation's notice board.</p> <p>Individuals who were in contact with the congregation prior to May 2018 are deemed to be aware of the congregation's approach to data protection in line with Article 13 (4) of the GDPR.</p>	<p>Every congregation and presbytery must have a privacy notice explaining how information is collected, what is done with it and the legal basis on which it is used. Church of Scotland privacy notices emphasise that individuals may object to their data being processed and provide instructions on how to do that.</p> <p>A style of privacy notice is available from the Church of Scotland website.</p>

C) THE BALANCING TEST

	Question	Answer	Guidance
19	Can the individual, whose data is being processed, control the processing activity or object to it easily?	Yes. The congregation’s privacy notice provides instructions to data subjects on how to object to their information being processed. In the event of an objection all processing will cease unless permitted under the GDPR.	<p>The “right to be forgotten” is not an absolute right. In some circumstances it may be necessary to retain, or continue to process, an individual’s information despite an objection.</p> <p>If you receive an objection and require guidance you should contact the Presbytery Clerk in the first instance.</p>
20	Can the scope of the processing be modified to reduce/mitigate any underlying privacy risks or harms?	The congregation processes a minimal amount of information, only in line with the purposes for which it was provided and with a view to safeguarding privacy by using steps such as password protection, encryption and secure storage.	

D) SAFEGUARDING AND COMPENSATING CONTROLS

The congregation endeavours to ensure that personal data is kept as secure as reasonably possible by using measures such as: the use of encryption and password protection on devices (including external storage devices); data minimisation and compliance with good practice in data retention; restricted access (where applicable); the use of privacy notices; and seeking consent for use of information relating to children and/or particularly sensitive information. It has appointed someone with responsibility for data protection and is familiar with the Guidance issued by the Church's Law Department and has effective data protection and data retention policies in place.

E) REACHING A DECISION AND DOCUMENTING THE OUTCOME

Taking the above answers into consideration and in line with the GDPR requirements for relying on legitimate interests for the processing of data, the congregation considers that the processing of personal information of those in contact with it is required in order to achieve the legitimate objectives of the congregation and the Church of Scotland, in line with the reasonable expectations of data subjects and in fulfillment of the data subjects' interests. The nature of the data being processed and the purposes for which it is processed are at the lower end of the scale of risk. Any limited risk can be mitigated by appropriate safeguards and controls.

Signed by:

On behalf of Congregation

Role:

(Specify the role of the person completing this assessment)

Date:

Review date:

It is recommended that your Legitimate Interests Assessment is reviewed on an annual basis or earlier in the event of any change in processing. If there are any changes, a new assessment should be completed. If there are no changes that should be recorded and stored on file.