

Context for Explicit Consent for Processing of Personal Data in the Republic of Ireland

GDPR

GDPR provides for a number of legal bases for processing personal data, and a selection of conditions which can be relied upon where the personal data is special category.

Consent is one of the available legal bases (art 6) and explicit consent one of the available conditions (art 9).

Health Research Regulations

The Health Research Regulations (HRRs) introduced mandatory explicit consent *as a safeguard* when processing both personal data, and special category personal data for the purposes of health research in the Republic of Ireland.

Explicit consent related to data processing only, and was to be interpreted as per the definition of consent in GDPR.

Where explicit consent was not feasible, there was the option of applying for a consent declaration via the Health Research Consent Declaration Committee (HRCDC), and further to amendments to HRRs to rely on certain exemptions subject to conditions.

The amendments to the HRRs made reference to “*international best practice on the ethical conduct of health research (which includes informed consent, transparency and independent ethical oversight)*”

Explicit consent for data processing was still required *as a safeguard*, but the context of informed consent for participation in research was referenced.

The Department advised in a masterclass on consent in April 2021 that explicit consent was *'informed consent which is documented'*

Please be advised that this definition of ‘explicit consent’ is not legally correct.

Gillian Vale
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