COVID-19 – Data Protection Checklist
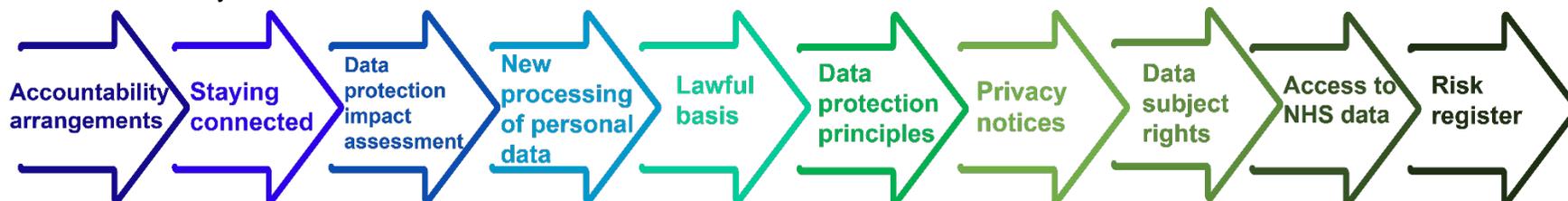
1. Introduction and Context

During COVID-19 and as we go forward, organisations still have a statutory responsibility to ensure that they have effective and robust information governance arrangements in place and remain accountable for their handling of personal data during the public health emergency. In particular, they must be able to demonstrate how they maintained compliance with data protection laws when establishing new data collections and sharing of patient and staff personal data to support the pandemic response.

Thank you to Audit Yorkshire for their contribution to this checklist.

2. Supporting our clients

We have developed the following Data Protection Checklist to reflect various guidance issued by the Information Commissioner and NHS Digital (NHSX), to help you consider the changes you are making/have made to your data processing activities during the outbreak. It provides a:

- Structured approach to assessing the robustness of your internal control, governance and risk management arrangements, specifically in relation to data security and protection in the context of COVID-19.
- Vehicle for checking and demonstrating that measures, established at pace, were implemented in accordance with legal and NHS requirements.
- Supplement to your statutory documentation of processing activities, which can be used to support future assurance.
- Reference and planning tool for data protection in the recovery phase, working towards a return to 'business as usual' – or more likely the 'new normal'.

Accountability arrangements → Staying connected → Data protection impact assessment → New processing of personal data → Lawful basis → Data protection principles → Privacy notices → Data subject rights → Access to NHS data → Risk register

3. Data Protection Checklist

Areas for NHS organisations to consider		Organisation's Response
Accountability arrangements	**Accountability Arrangements**	
	• Have changes been made to Information Governance (IG) roles, responsibilities and processes? • Are arrangements in place to keep revised structures under review as the situation changes over time? • Are any changes fully documented and agreed by the Senior Information Risk Owner (SIRO)? • Have IG committees been reviewed and streamlined or delayed where appropriate? • Has the SIRO been updated on any changes in information risk roles and responsibilities? • Have any changes to IG arrangements been communicated effectively? • Have key controls been identified in the event of IG specialist staff being unavailable? • Are finance systems and processes in place to capture expenditure specific to COVID-19? • Are staff who manage Subject Access Requests (SAR) supported at this time? • Are staff who manage Freedom of Information Act (FoIA) requests supported at this time? • Have you postponed submission of the Data Protection and Security Toolkit (DSPT)?	

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Areas for NHS organisations to consider	Organisation's Response
Staying connected **Staying Connected** • Have staff who are working from home been made aware of <u>secure operating procedures</u>, including use of video conferencing and messaging apps? • Have volunteers and returning staff been informed of their <u>information governance responsibilities</u>? • Are hospital patients able to keep in touch with relatives via <u>secure use</u> of tablets and mobile devices?	
Data protection impact assessment **Data Protection Impact Assessment (DPIA)** • Has the organisation adopted a streamlined DPIA process for COVID-19? • Has the process been effectively communicated and is take-up being supported and monitored? • Have you conducted DPIAs, for example, to cover staff working from home and using video conferencing facilities? • Are adequate records available of completed DPIAs to support audit review? • Has the register of DPIAs been updated?	
New processing of personal data **New Processing of Personal Data** *(See also section on Access to NHS Data)* • Has the data collection been mandated at national level? • Has the need been identified locally? • Has the collection been reviewed by IG staff/Data Protection Officer? • Has it been approved by the Caldicott Guardian/SIRO? • Has the collection been documented in the organisation's Information Asset Register (IAR)? • Have Data Flow Maps (DFM) been updated?	

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Areas for NHS organisations to consider	Organisation's Response
• Are you keeping data uses for COVID-19 under review in accordance with national timescales?	

Lawful basis

Lawful Basis	
• Has an Article 6 condition been documented for all personal data uses? • Has an Article 9 condition been documented for special category (sensitive) data? • For patient information, are you relying on a Control of Patient Information (COPI) Notice? • If you are collecting information about staff symptoms, are you meeting your legal obligations of transparency, fairness and proportionality?	

Data protection principles

Data Protection (DP) Principles	
• For each new use of personal data, are you able to demonstrate compliance with the six DP Principles? • Have staff been provided with training and instructions that support compliance? • Do you need to provide additional policies and/or Standard Operating Procedures (SOP)?	

Privacy notices

Privacy Notices	
• Has your organisation published a supplementary Privacy Notice for COVID-19 for service users? • Has your organisation published a supplementary Privacy Notice for COVID-19 for staff and the wider workforce, which covers coronavirus testing and surveillance?	

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Areas for NHS organisations to consider	Organisation's Response
Data subject rights → **Data Subject Rights** • Have you identified what rights are available to data subjects in respect of their data during the pandemic? • Have you postponed implementation of the National Data Opt-Out?	
Access to NHS data → **Access to NHS Data** • Are you making effective use of NHS data sets to support your pandemic response? • Are you aware of the process for requesting data from the NHS Data Store? • When considering sharing data with a commercial partner, do you ensure the arrangement is safe, ethical, evidenced and transparent in accordance with NHS Guidelines?	s
Risk register → **Risk Register** • Have you documented the risks associated with the above considerations on risk registers? • Have you considered how you will manage any risks from the above considerations?	

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