

Response ID ANON-D6PW-YGKZ-6

Submitted to Consultation - Recognised legitimate interest
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About you

1 Are you answering:

On behalf of an organisation

About your organisation

2 What is the name of your organisation?

Name of your organisation:

BILETA – British and Irish Law Education and Technology Association <https://www.bileta.org.uk/>

3 Which of the following sectors best describes your organisation?

Third sector (eg charity, not for profit)

Other (please specify):

4 Approximately how many employees does your organisation have?

50-249

Your use of personal information

5 Have you ever handled people's information for any of the following purposes? (please select all that apply)

None of the above

6 Did you face any data protection challenges when handling people's information for these purposes?

Unsure / don't know

Please tell us what these challenges were:

N/A

Questions about the draft guidance

7 Was it easy to find the information you need in the guidance?

Yes

Do you have any suggestions for improving the structure?:

8 Do you think the guidance is clear?

Yes

Do you have any suggestions to make it clearer?:

The guidance is clear and well-structured. It accurately sets out the recognised legitimate interest (RLI) lawful basis under Article 6(1)(ea) UK GDPR, distinguishing it from the existing legitimate interests basis in Article 6(1)(f). The explanation of the five recognised conditions and the consistent "At a glance / In detail" format make the document easy to navigate and legally robust.

The guidance acknowledges the forthcoming reforms under section 71 and Schedule 5 of the Data (Use and Access) Act 2025, which will introduce Article 8A and Annex 2 UK GDPR. These provisions will deem certain processing automatically compatible with its original purpose and overlap with the recognised legitimate interest conditions. However, the guidance does not yet reflect these changes in detail.

To improve accuracy and usability, the ICO should:

- Clarify how the forthcoming Article 8A/Annex 2 provisions will interact with recognised legitimate interests.
- Distinguish between existing Article 6(4) compatibility obligations and the new deemed-compatibility mechanism.
- Provide clearer operational advice and worked examples illustrating how organisations should choose between RLI and compatibility.
- Indicate whether the ICO plans to update this guidance once the 2025 Act takes effect.

9 Does the guidance contain the right level of detail to help you understand when each of the five recognised legitimate interest conditions may apply? (we will publish a brief version of this guidance and separate assistance for small businesses in due course)

Yes

Do you have any suggestions how we can improve the level of detail?:

The guidance is generally clear and helpful in explaining the structure and purpose of the recognised legitimate interest conditions. The examples are quite effective in illustrating the difference between the conditions and how they might apply in practice. However, for some data controllers and processors, especially those without in-house legal expertise, the step from understanding the principle to using it to their specific context may still feel somewhat challenging.

To improve clarity, it would be helpful to include:

1. Clearer comparative explanations – a short table highlighting the distinctions between the five recognised conditions, including typical scenarios and when each should not be used.
2. More emphasis on practical decision-making – for example, prompting organisations to consider: What evidence of necessity or detriment should we document? and What questions should we ask when assessing whether another organisation's public task/official authority genuinely requires disclosure?
3. More examples involving digital and data-sharing environments, including platform-to-platform sharing, contracted service delivery, and data processors acting on behalf of public bodies, as these are increasingly common contexts.
4. Guidance on what is considered sufficient documentation, particularly for SMEs who may feel uncertain about how detailed their records need to be.
5. Plain-language alternative labels for some of the more technical condition names (e.g., the “public task disclosure condition”), as terminology can otherwise feel opaque.

Also, we notice that you use the term ‘personal information’ extensively. Please try and use the correct term, i.e personal data.

10 Did you find the guidance sufficiently clear on the differences and similarities between recognised legitimate interest and the separate legitimate interests lawful basis?

Yes

Do you have any suggestions how we can make it clearer?:

The guidance does explain the conceptual relationship between the recognised legitimate interest conditions and the broader legitimate interests lawful basis. The distinction that recognised legitimate interests does not require the balancing test because Parliament has already determined that the legitimacy of the purpose is well articulated. However, some users may still struggle to apply the distinction in decision-making, particularly where their scenario does not fit neatly into the examples.

To improve clarity, it may help to more explicitly:

1. Set out a direct comparison table (or adding to the existing one) showing:
 - o when the balancing test is required (general legitimate interests),
 - o when it is not required (recognised legitimate interest),
 - o and what evidence still needs to be retained in both cases.
2. Reinforce the message that recognised legitimate interests are not “automatic”, organisations must still demonstrate necessity, proportionality, and compliance with the data protection principles such as data minimisation and lawfulness, fairness and transparency.
3. Include short “edge-case” examples where an organisation thinks a recognised legitimate interest applies, but it does not—this would help users avoid over-extension.
4. Summarise the decision-making steps in a simple flowchart, especially for small organisations or voluntary sector bodies.

These additions would help clarify not only the conceptual difference but also how organisations distinguish which lawful basis is appropriate in practice.

11 One of the recognised legitimate interest conditions is called "Disclosure for purposes of processing described in Article 6(1)(e)". This is a complicated name so instead the guidance calls it the 'public task disclosure request condition'. Do you think this name is better?

No

Do you have any suggestions for an alternative shorthand name for this condition?:

“Public task disclosure request condition” is long and emphasises the request, not the purpose. We suggest one of the following for better precision and brevity:

Public Task Disclosure Condition or Official Function Disclosure Condition - Shorter, accurate, and focuses on the legal authority. The former mirrors "public task" wording used elsewhere in UK GDPR

Disclosure for Public Task Purposes - Mirrors "public task" wording used elsewhere in UK GDPR, but clearer than the current label.

12 How confident do you feel about using recognised legitimate interest after reading this guidance?

As confident as before

13 Do you have any additional examples of real-life situations when recognised legitimate interest may be appropriate that you would like the guidance to include?

Yes

Please give details of your examples:

The guidance must explicitly include RLI examples for non-public authority research bodies (like universities/academic associations) collaborating on public interest projects, specifically under the Public Task Disclosure Request and Safeguarding Conditions.

RLI Condition Examples

Public Task Disclosure Request Condition

A University Research Team (not a public authority) models new national security legislation for the government. They are authorized to request anonymised metadata from a telecommunications company (private entity). The company uses the RLI Condition to lawfully disclose the data quickly, avoiding a full LIA.

Justification: Clarifies RLI use by private sector data holders to promptly comply with requests from non-public authorities acting under official public interest mandates.

Safeguarding Condition

An educational technology platform (commercial entity) used by schools identifies high-risk communication patterns (e.g., grooming/self-harm) among vulnerable minors. The platform uses the RLI Safeguarding Condition to proactively share minimal data with the appropriate Local Authority/Police Safeguarding Unit without delay.

Justification: A specific private sector EdTech example is crucial due to high-risk data in education. It clarifies RLI's role in enabling immediate, necessary disclosures where LIA delay would risk harm.

Crime Condition (Academic Integrity)

A University's Academic Registry uses data analysis to detect systemic contract cheating (organised criminal activity). The Registry uses the RLI Crime Condition to process necessary personal data and share findings with the Police's Economic Crime Unit to initiate a formal investigation.

Justification: This demonstrates RLI's applicability to sophisticated, non-physical crimes in the education sector, ensuring academic integrity protections have a robust, efficient lawful basis.

Costs and benefits

14 Do you think following this guidance presents additional:

Both

15 What, if any, are the benefits you expect to get from using this guidance? (please select all that apply)

Better understanding of what my organisation must, should and could do to comply with the legislation, Increased confidence that we're providing a compliant service or product, Save us time or money, or both, Opportunity for training and upskilling, Other (please specify)

Benefits from using this guidance:

- Better understanding of what my organisation must, should and could do to comply with the legislation (Crucial for an organisation that interprets law for its membership).
- Increased confidence that we're providing a compliant service or product (Applies to our academic events, publishing, and policy advice).
- Save us time or money, or both (By eliminating the need to conduct LIA for applicable scenarios).
- Better able to advise our customers (Applies to our members and the wider academic/policy community we inform).
- Opportunity for training and upskilling (For our committee members and the broader academic law community).

16 What, if any, are the costs of using this guidance? (please select all that apply)

Time taken to read and understand the guidance, Wider familiarisation costs linked to the guidance, Changes to business processes

Costs of using this guidance:

- Time taken to read and understand the guidance (Initial investment by committee members and staff).
- Wider familiarisation costs linked to the guidance (Developing briefing notes, running internal webinars, and explaining the nuance between RLI and standard Legitimate Interests to members).
- Changes to business processes (Minor updates to our internal Data Protection Policy and our conference/publication protocols to specifically incorporate RLI as a possible lawful basis).

17 Can you provide an estimate of the costs and benefits your organisation is likely to incur as a result of using this guidance and briefly how you calculated them?

Estimate of costs and benefits, plus calculation method:

BILETA views the RLI guidance impact as primarily intellectual and administrative, not commercial. We assess it based on time (cost) and legal clarity/efficiency (benefit) for our academic members.

RLI Guidance: Costs and Benefits Summary

Benefits (High Impact):

Administrative Efficiency: RLI eliminates the need for case-by-case Legitimate Interests Assessments (LIAs) for the five public-interest activities (Safeguarding, Crime, etc.). This significantly reduces administrative burden and legal uncertainty for institutions.

Research Confidence & Clarity: RLI conditions (e.g., public task disclosure) give academics greater legal certainty for public interest research data sharing/access. This directly supports BILETA's aim of promoting technology law research.

Costs (Medium to Low Impact):

Interpretation & Dissemination (Medium): The initial cost involves analysing the guidance, producing member materials, and running training to correctly distinguish RLI. This requires committee time/resource development.

Policy Integration (Low): The cost of updating BILETA's internal policies, guidance, and templates to reflect the new lawful basis and 'Must, Should, Could' terminology.

Methodology Snapshot

Cost Calculation (Estimated 60-80 Person-Hours): Requires 40 hours of senior committee time for initial review and summary drafting, plus 20-40 hours of staff time for dissemination, web updates, and training workshops.

Benefit Calculation: The main benefit is time saving and risk reduction for member institutions. RLI removes the LIA need. Assuming 5 hours saved per applicable research project (DPO/researcher time), annual administrative savings across the UK research sector are substantial. The benefit for BILETA is enhanced member value and support for responsible legal research.

Final comments

18 Before submitting your response to this survey, do you have any final comments you've not made elsewhere? (please remember that the ICO can't change the law)

Yes

Please provide any further comments:

Our main concern, as a legal-academic association, is ensuring the RLI guidance provides maximum operational clarity for the research and education sectors without eroding existing safeguards.

1. Delineation with Public Task (Article 6(1)(e)): The guidance must clearly separate the Public Task Disclosure Request Condition (RLI) from the Public Task basis (Art. 6(1)(e)) used by public universities. RLI is intended for private/third-sector bodies assisting public tasks. The ICO must provide definitive examples of when a university (as a public authority) should rely on Art. 6(1)(e) versus when it can use RLI for disclosures, to maintain research legal certainty.

2. Focus on the Necessity Test: The RLI removes the Balancing Test, but the Necessity Test remains crucial. We urge the guidance to:

- o Provide explicit examples where RLI fails because less intrusive means (e.g., anonymisation, pseudonymisation) or alternative data sources were available, reinforcing the data minimisation principle. This prevents RLI from being perceived as a low-effort 'default' for public-good processing.

3. Support for Online Safety Research: The RLI Public Task Disclosure Condition should be explicitly confirmed as the legal anchor for private online service providers disclosing necessary data to accredited academic researchers (as non-public authorities) where that research is mandated by UK law (e.g., under the Online Safety Act 2023). This provides the speed and certainty necessary for high-value public interest studies.