Policy for Processing Special Categories of Personal Data for Law Enforcement Purposes

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NHS Shetland Document Development Coversheet*

Name of document	Policy for Processing Special Categories of Personal Data for Law Enforcement Purposes		
Document reference number	HRPOL044	New or Review?	Review
Author	David Morgan, IG Manager, FOI Lead and DPO – adapted with permission from an original by Michelle Nobes, IG Manager, DPO (NHS Lanarkshire).		
Information Asset Owner	Sam Collier-Sewell, Head of IG, FOI Lead and DPO		
Executive lead	Colin Marsland, Director of Finance		
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Proposed groups to present document to:		
IGSG/IGG	FPC	

Date	Version	Group	Reason	Outcome
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12/09/2022	0.3	CGC	FA	A
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Examples of reasons for presenting to the group	Examples of outcomes following meeting
• Professional input required re: content (PI)	• Significant changes to content required – refer to Executive Lead for guidance (SC)
• Professional opinion on content (PO)	• To amend content & re-submit to group (AC&R)
• General comments/suggestions (C/S)	• For minor revisions (e.g. format/layout) – no need to re-submit to group (MR)
• For information only (FIO)	• Recommend proceeding to next stage (PRO)
• For proofing/formatting (PF)	• For upload to Intranet (INT)
• Final Approval (FA)	• Approved (A) or Not Approved, revisions required (NARR)

*To be attached to the document under development/review and presented to the relevant group

Please record details of any changes made to the document in the table below

Date	Record of changes made to document
17/03/2022	NHS Lanarkshire document (titled 'Appropriate Policy Document For Processing Special Category Data For Law Enforcement Purposes Under the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021') adapted for NHS Shetland by David Morgan and Sam Collier-Sewell (senior IG Officer) and saved as version 0.1
15/08/2022	DISG reviewed document on 4 April 2022 and confirmed that they were not aware of any other legislation that conferred statutory functions for law enforcement purposes on NHS Shetland. Sections 3.3 and 4.3 amended to reflect this. Saved as version 0.2
12/09/2022	Approved at CGC with no revisions. Saved as version 1.0
05/01/2026	Minor revisions by Sam Collier-Sewell, Head of IG and DPO, to take account of Data (Use and Access) Act 2025. Saved as version 1.1

Contents

1. Introduction and background

1.1. This document is adapted with permission from the NHS Lanarkshire 'Appropriate Policy Document For Processing Special Category Data For Law Enforcement Purposes Under the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021'

1.2. Shetland Health Board (hereinafter referred to as NHS Shetland) processes special categories of personal data for law enforcement purposes in accordance with Part 3 of the Data Protection Act 2018 (DPA 2018). Unless otherwise indicated, any reference to 'personal data' in this document refers to special categories of personal data.

1.3. NHS Shetland acknowledges the introduction of the Data (Use and Access) Act 2025 (DUAA), which amends certain provisions of the DPA 2018 relating to law enforcement processing. The organisation is committed to monitoring the implementation of this Act and will review and update this policy as further provisions come into force or as required by statutory guidance.

1.4. Under section 42 of the DPA 2018, NHS Shetland is required to have an appropriate policy document (APD) in place when processing special categories of personal data for law enforcement purposes which:

   a. explains NHS Shetland's procedures for securing compliance with the law enforcement data protection principles (see DPA 2018 s 34(1)); and

   b. explains NHS Shetland's policies as regards the retention and erasure of personal data processed, giving an indication of how long such personal data is likely to be retained.

1.5. NHS Shetland is also required under the DPA 2018 to

   a. retain the APD (this policy);

   b. review and, if appropriate, update it; and

   c. make it available to the Information Commissioner (ICO) on request, without charge.

1.6. This policy:

   a. covers all staff who work for or under contract to NHS Shetland, including contractors, students, agencies, bank staff, volunteers, job applicants, patients, donors, users of NHS Shetland services and products and NHS Shetland customers;

   b. supplements and should be read in conjunction with other NHS Shetland policies and documents in force from time to time, such as the NHS Shetland Data Protection Policy, and with any other privacy notice we may provide on specific occasions when NHS Shetland is collecting or using personal data and special category personal data;

   c. does not apply to sensitive data processing for purposes not relating to law enforcement. The Policy for Processing Special Categories of Personal Data and Personal Data Relating to Criminal Convictions and Offences covers data processing operations that are carried out with a primary purpose other than law enforcement.

   d. will be reviewed every two years or revised more frequently if necessary, in light of any changes in the underlying legal, regulatory and policy frameworks, and business operations and tasks.

i. The ICO is currently (January 2026) reviewing and updating its guidance on law enforcement processing and APDs. NHS Shetland will ensure that this policy is reviewed and amended in line with any new or updated ICO guidance as it is published.

e. will be retained for the duration of our processing and for a minimum of 6 months after processing ceases.

2. Personnel responsible for this appropriate policy document

2.1. The Senior Information Risk Owner (SIRO) has overall responsibility for the effective operation of this policy.

2.2. All staff are responsible for abiding by this policy.

2.3. If you have any questions regarding this policy please contact the NHS Shetland Data Protection Officer (DPO) at shet.dpo@nhs.scot or by calling Montfield Headquarters on 01595 743060.

3. Sensitive processing for law enforcement purposes

3.1. Section 31 of the DPA 2018 defines the law enforcement purposes as the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.

3.2. Under section 35(8) of the DPA 2018, sensitive processing means:

a. the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership;

b. the processing of genetic data, or of biometric data, for the purpose of uniquely identifying an individual;

c. the processing of data concerning health;

d. the processing of data concerning an individual's sex life or sexual orientation.

3.3. Under Part 3 of the DPA 2018, NHS Shetland acts as a competent authority because it holds statutory functions for law enforcement purposes under:

a. The Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (FMS 2021). NHS Shetland processes special categories of personal data for the purposes of the provision of certain forensic medical services as set out in the FMS 2021.

4. DPA 2018 conditions for sensitive processing for law enforcement purposes

4.1. Whilst this policy is concerned with the **sensitive** processing of personal data for law enforcement purposes, it is important to note that **all processing of personal data** for any of the law enforcement purposes must be lawful and fair and, in accordance with DPA 2018 s 35(2), the processing of all personal data for any of the law enforcement purposes is lawful only if, and to the extent that, it is based on law and either:

a. the data subject has given consent to the processing for that purpose, or

b. the processing is necessary for the performance of a task carried out for that purpose by a competent authority.

4.2. Under DPA 2018 s 35(3) to (5), the sensitive processing of personal data for any of the law enforcement purposes is permitted only if NHS Shetland has an ADP in place at the time of processing and if either:

a. the data subject has given consent to the processing for the law enforcement purpose

or

b. the processing is strictly necessary for the law enforcement purpose and the processing meets at least one of the conditions in DPA 2018 Schedule 8

4.3. Where NHS Shetland relies on consent as a legal basis for law enforcement processing, it will ensure that consent is freely given, specific, informed and unambiguous – in line with the definition set out in the DUAA and current ICO guidance.

4.4. Where NHS Shetland relies on processing being strictly necessary, the relevant DPA 2018 Schedule 8 condition for the processing is:

a. Condition 1 Statutory etc purposes

NHS Shetland carries out sensitive data processing for law enforcement purposes to comply with its statutory obligations under Section 1 of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021.

5.   Procedures for securing compliance

5.1. NHS Shetland is committed to safeguarding and protecting personal data and using it in accordance with the applicable data protection framework. More specifically, NHS Shetland will take all the appropriate measures to respect the following principles when processing personal data, as required under DPA 2018 s 34:

a. Lawfulness, fairness and transparency

NHS Shetland will use your personal information lawfully, fairly and in a transparent way. NHS Shetland will put in place appropriate technical and organisational measures to meet the requirements of lawfulness, fairness and transparency. These will include:

i. Processing personal data only where an appropriate legal basis is established before data processing takes place. NHS Shetland operates principally on the basis that data processing is based on a statutory legal basis, not on the basis of consent.

ii. Personal data will be processed in accordance with the applicable regulatory framework under which NHS Shetland operates as an NHS Scotland organisation and in relation to its public duties and functions.

iii. Sensitive processing data will take place only where strictly necessary.

iv. Keeping data subjects informed about the processing of their personal data through publicly available data protection ('privacy') notices and this policy.

Privacy notices covering specific uses of personal data may be also provided directly to the data subjects.

b. Purpose limitation

NHS Shetland will process personal information only for specified, explicit and legitimate purposes that we have clearly explained and not used in any way that is incompatible with those purposes or could breach the data subjects' expectations. We will put in place appropriate technical and organisational measures to meet the requirements of purpose limitation. These will include:

i. NHS Shetland will lawfully process personal data collected for the stated purposes as specified in the privacy notices, providing that the processing is necessary and proportionate to these purposes.

ii. NHS Shetland will keep this information up to date and conducts regular reviews and audits to ensure the respect of the purpose limitation principle.

iii. NHS Shetland will only use data collected for a law enforcement purpose for purposes other than law enforcement where we are authorised to do so by law and provided that other data protection obligations are met, including transparency.

iv. If we are sharing data with another controller, we will document that they are authorised by law to process the data for their purpose.

c. Data minimisation

Personal data processed by NHS Shetland for any of the law enforcement purposes must be adequate, relevant and not excessive in relation to the purpose for which it is processed. NHS Shetland will put in place appropriate technical and organisational measures to meet the requirements of data minimisation. These will include:

i. NHS Shetland will collect and process the strictly necessary personal data only to the extent that it is needed to carry out its law enforcement powers.

ii. NHS Shetland will not collect data that are not relevant or proportionate to the stated processing purposes.

iii. NHS Shetland will carefully assess the nature, type and amount of the necessary personal data, especially in relation to special categories of personal data.

iv. Where personal data are not necessary, no personal data will be collected.

v. NHS Shetland will implement appropriate controls and measures to anonymise personal data in order to minimise any risks to data subjects, where necessary and possible.

d. Accuracy

NHS Shetland will take all reasonable and necessary steps to ensure that personal information is accurate and up to date. NHS Shetland will put in place appropriate technical and organisational measures to meet the requirements of accuracy. These will include:

i. NHS Shetland will regularly review the Information Asset Register and our Record of Processing Activities (ROPA) to comply with the accuracy principle.

ii. Data subjects may contact NHS Shetland to provide updated personal data, where relevant.

iii. Where NHS Shetland becomes aware that personal data are inaccurate or out of date, having regard to the purpose for which data are processed, NHS Shetland will take every reasonable step to ensure that data are rectified without delay. Due attention will be paid where this data has been shared with other parties.

iv. NHS Shetland will have clear internal policies and allocated responsibilities to communicate and implement any requests to rectify personal data. Where this is not possible, NHS Shetland will justify and document its decision and inform data subjects.

v. NHS Shetland will consider the accuracy, completeness, quality and reliability of personal data processed for law enforcement purposes before sharing them with third parties.

e. Storage limitation

NHS Shetland will keep personal data only as long as necessary for the specific law enforcement purposes of data processing. NHS Shetland will put in place appropriate technical and organisational measures to meet the requirements of storage limitation. These will include:

i. NHS Shetland will determine the retention period for this data in line with its legal and regulatory obligations and public tasks.

ii. NHS Shetland will keep personal information in accordance with the NHS Shetland Records Management Policy, the Scottish Government Records Management Health and Social Care Code of Practice (Scotland) 2020 and in line with its legal and regulatory obligations.

iii. The NHS Shetland Records Management and Information Security policies will provide for the appropriate retention, and thereafter disposal, of personal data that are no longer required by NHS Shetland and are authorised by the data owner to be disposed of securely.

iv. NHS Shetland will document and regularly review the applied retention periods.

v. NHS Shetland will provide data subjects with information about the applied retention periods.

vi. Once no longer needed, personal data will be disposed of securely or rendered permanently anonymous, where this is necessary and possible.

vii. NHS Shetland's retention policy and schedule will be reviewed regularly and updated when necessary.

viii. NHS Shetland will have appropriate policies for reviewing and auditing where personal data have been disposed of or anonymised, upon the completion of the applied retention period, where necessary.

ix.   NHS Shetland will have appropriate policies for securely disposing of physical and electronic copies of personal data.

f.   Integrity and confidentiality

NHS Shetland will keep and process personal data securely to protect it against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures. NHS Shetland will put in place appropriate technical and organisational measures to meet the requirements of integrity and confidentiality. These will include:

i.   The NHS Shetland Information Security Policy and associated Policies which provide safeguards for data confidentiality, integrity and availability.

ii.   Electronic information will be processed within our secure network.

iii.   Hard copy information will be kept secure at all locations (including offices, home and archival storage locations) and processed and disposed of in line with our security procedures.

iv.   Our electronic and physical storage systems will have appropriate access controls and audit logs applied.

v.   Authorised staff will only have access to personal data on a need-to-know basis, as required by their business role, and this access will be reviewed periodically.

vi.   We will have information security policies and systems to monitor and remedy any compromise of data security.

vii.   Third parties or contractors with which NHS Shetland engages will only process personal information on our instructions or with our agreement, and where they do so, they will agree to treat the information confidentially and to keep it secure.

g.   Accountability

NHS Shetland will be able to demonstrate its compliance with data protection law and its obligations under the UK-GDPR and the DPA 2018 and other applicable data protection requirements. NHS Shetland will put in place appropriate technical and organisational measures to meet the requirements of accountability. These will include:

i.   Appointing a Data Protection Officer (DPO) who will report directly to our highest management level.

ii.   Appointing a Senior Information Risk Owner (SIRO), Information Security Officer (ISO), Caldicott Guardian, Information Asset Owners (IAOs) and Information Asset Administrators (IAAs).

iii.   Establishing an internal, dedicated team of Information Governance experts responsible for ensuring and monitoring NHS Shetland's compliance with data protection law and best information governance practices.

iv.   Keeping documentation of NHS Shetland data processing activities up to date.

v. Adopting and implementing training, policies and associated documentation in relation to the use, access and protection of personal data to establish a robust organisational data protection culture.

vi. Applying the appropriate security measures and keeping up-to-date documentation about these organisational and technical measures.

vii. Having appropriate privacy notices in place and making them available when required.

viii. Ensuring that our external partners and contractors comply with data protection law and implementing data processing agreements with them.

ix. Conducting data protection and security data protection impact assessments, where required, and keeping these up to date.

x. Conducting risk assessments as proactive risk mitigation measures.

xi. Taking a 'data protection by design and default' approach to our activities.

5.2. NHS Shetland recognises the rights of data subjects under Part 3 of DPA 2018, including the rights of access, rectification, erasure, restriction of processing and rights related to automated decision-making. Information about how to exercise these rights is provided in our privacy notices and is available on request from the Data Protection Officer (shet.dpo@nhs.scot).

5.3. NHS Shetland does not currently carry out automated decision-making, including profiling, using special category personal data for law enforcement purposes. Should such processing be introduced, the organisation will ensure compliance with the requirements of DUAA and Part 3 of DPA 2018, including providing meaningful information about the logic involved, the significance and the envisaged consequences of such processing for data subjects, as well as ensuring the right to obtain human intervention.

6. NHS Shetland's policies for retention and erasure of personal data

6.1. NHS Shetland will ensure that, where special category or criminal convictions personal data are processed:

a. There is a record of that processing, and that record will set out, where possible, the envisaged time limits for disposal of the different categories of data.

b. Where special category data is no longer required for the purpose for which it was collected and, where necessary and possible, it will be securely deleted or rendered permanently anonymous.

c. Data subjects will receive information about how their data will be processed in line with Articles 12-14 UK-GDPR.

6.2. Our retention and disposal practices are set out in the NHS Shetland Records Management Policy and will comply with the Scottish Government Records Management Health and Social Care Code Of Practice (Scotland) 2020

End of document

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Appendix 1 – Rapid Impact Checklist

An Equality and Diversity Impact Assessment Tool:

Which groups of the population do you think will be affected by this proposal?* All groups will be affected as the policy relates to the processing of special category personal data of anyone by NHS Shetland for law enforcement purposes. The Scottish Crime and Justice Survey 2017/18 found that people who identify as women are more likely to have experienced sexual assault, and so the policy is more likely to have an impact on this group. **Other groups:** • Minority ethnic people (incl. Gypsy/travellers, refugees & asylum seekers) **Yes** • Women and men **Yes, women more than men** • People with mental health problems **Yes** • People in religious/faith groups **Yes** • Older people, children and young people **Yes** • People of low income **Yes** • Homeless people **Yes** • Disabled people **Yes** • People involved in criminal justice system **Yes** • Staff **Yes** • Lesbian, gay, bisexual and transgender **Yes**   *the word proposal is used as shorthand for the policy, procedure, strategy or proposal that is being be assessed
In the following sections, please consider what positive and negative impacts you think there may be and which specific groups will be affected by these impacts?

What impact will the proposal have on lifestyles? For example, will the changes affect: • Diet and nutrition • Exercise and physical activity • Substance use: tobacco, alcohol and drugs • Risk taking behaviour • Education and learning or skills	None

Will the proposal have any impact on the social environment? Things that might be affected include: • Social status • Employment (paid or unpaid) • Social/Family support • Stress • Income	None
Will the proposal have any impact on the following? • Discrimination? • Equality of opportunity? • Relations between groups? • Fairer Scotland Duty	As the policy is intended to ensure the fair and lawful processing of personal data, it is expected that there will be positive impact on the groups noted above.
Will the proposal have an impact on the physical environment? For example, will there be impacts on: • Living conditions? • Working conditions? • Pollution or climate change? • Accidental injuries or public safety? • Transmission of infectious disease?	None
Will the proposal affect access to and experience of services? For example: • Health care • Transport • Social services • Housing services • Education	The purpose of the policy is to support the forensic medical services provided by NHS Shetland and ensure that personal data collected by these services for the purpose of law enforcement is processed fairly and lawfully. In doing so, the policy supports the main objective of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 to "improve the experience, in relation to forensic medical services, of people who have been affected by sexual crime". Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill

Summary Sheet

Positive Impacts (Note the groups affected)	Negative Impacts (Note the groups affected)
Clear guidelines on the processing of special category personal data for the purpose of law enforcement should result in the fair and lawful processing of the data of all the groups noted above.	None

Additional Information and Evidence Required
None

Recommendations
None

From the outcome of the RIC, have negative impacts been identified for race or other equality groups? Has a full EQIA process been recommended? If not, why not?
No negative impact identified

Signature(s) of Level One Impact Assessor(s): David Morgan

Date: 29 August 2022