WHAT IS A
COOKIE?

digital
TOOLKIT
Guidance for Organisations

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What is a Cookie?

A Cookie is a small data file that is downloaded and stored on a user's computer, smartphone or tablet. It allows the website to recognise that user's device and store some information about the user's preferences or past actions such as login details, the contents of shopping baskets and movement around the website.

Some Cookies are essential to make a website work properly, some are not and, for example, relate to things like targeting advertising at a user based on that user's browsing history.

These latter types of Cookie can be thought of as invasive because they collect information about an individual's internet use and preferences.

Cookies can be set by the owners of the website but also by third parties who may be allowed to run content by the owner of the website (such as advertisements).

In Jersey, the use of Cookies needs to comply with the DPJL (Please note that the Privacy and Electronic Communications (EC Directive) Regulations 2003 which is in force in the UK and transposed the ePrivacy Directive 2002/58/EC into their law, does not apply here).

Are Cookies personal data?

Art.2(1) of the DPJL defines 'personal data' as:

> *'any data relating to a data subject.'*

Art.2(2) goes on to state that:

> *'A data subject is an identified or identifiable, natural, living person who can be identified, directly or indirectly, by reference to (but not limited to) an identifier such as'* –

(a) *A name, an identification number or location data;*

(b) *An online identifier; or*

(c) *One or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the person.*

The DPJL does not provide any guidance as to what constitutes an 'online identifier' but Recital 30 of the General Data Protection Regulation (GDPR) specifically refers to Cookies in this context:

'Natural persons may be associated with online identifiers provided by their devices, applications, tools and protocols, such as internet protocol addresses, Cookie identifiers or other identifiers such as radio frequency identification tags. This may leave traces which, in particular when combined with unique identifiers and other information received by the servers, may be used to create profiles of the natural persons and identify them.'

Identifiers used to create profiles of individuals, such as for the purposes of targeting advertising, are particularly likely to constitute personal data even if a person's name is not attached to their profile.

However, where Cookies are used solely to gather anonymous information about website usage at an aggregated level (and provided that data cannot be combined with any other data to link it to an identifiable individual) no personal data will be involved and would therefore fall outside the scope of the DPJL. So, if Cookies can be linked to an individual (including by linking together with other information) they will likely constitute personal data.

What do we need to do to comply?

You need to have a lawful basis in order to process Cookies and can only process personal data in compliance with the lawfulness and transparency principle as set out at **Art.8(1)(a) of the DPJL** and if the processing satisfies one of the conditions set out in Schedule 2 Part 1 (or Schedule 2 Part 2 if the processing involves **special category data**).

The basic rules are that you must:

- Tell people the Cookies are there;
- Explain what the Cookies are doing and why.

As long as you do this the first time you set Cookies, you do not have to repeat it every time the same person visits your website. However, bear in mind that devices may be used by different people. If there is likely to be more than one user, you may want to consider repeating this process at suitable intervals.

The two most common grounds considered in the context of Cookies are **consent and legitimate interests**.

For essential Cookies (Cookies that make your website function properly) you need to make sure that you choose an appropriate **legal basis** to process those particular Cookies and would not usually wish to rely on consent as your legal basis for these types of Cookie. This is because consent can be withdrawn by individuals and if an individual withdraws consent to essential Cookies that could affect the operation and/or presentation of your website and that could affect your business.

You need to have an appropriate basis for non-essential Cookies too and this can a different basis as compared to the one for essential Cookies. For example, consent may be used as a lawful basis.

Consent must be freely given, unambiguous and confirmed by a clear affirmative action. That means that you must not use any pre-ticked boxes: users need to confirm positively that they consent to the Cookies being used.

You may also need to obtain fresh consent if your use of Cookies changes over time.

Cookie checklist

☐ We understand what Cookies are and what they can be used for;

☐ We know the difference between session Cookies and persistent Cookies;

☐ We know the difference between first party and third-party Cookies.

Auditing our use of Cookies

☐ We know what Cookies our online service either already uses or intends to use;

☐ We have removed any Cookies that we don't need;

☐ We have confirmed the purposes of each Cookie;

☐ We identify what information each Cookie processes, including whether they are linked to other information we hold about our users or otherwise involve processing personal data;

☐ Where personal data is involved, we have ensured that we process this data in line with the requirements of the DPJL;

☐ We have confirmed whether our Cookies are session or persistent Cookies;

☐ We have confirmed whether our Cookies are first party or third party Cookies;

☐ We have appropriate arrangements in place for the use of any third-party Cookies, including what information they share with any third party, how it is shared, and what our users are told;

☐ We have established how long our Cookies last and that this duration is appropriate;

☐ We have identified those Cookies that are strictly necessary, and those that are not.

Information about Cookies

☐ We have ensured that we provide clear and easy to understand information about the Cookies we use. Please refer to our **Cookie Policy Template**;

☐ We have ensured that our information is comprehensive and covers all the Cookies we use.

Consent for Cookies

☐ We have implemented a consent mechanism that allows users of our online service to control the setting of all Cookies that are not strictly necessary;

☐ We ensure that our consent mechanism ensures the consent we obtain is in line with the DPJL's requirements;

☐ We keep any records of Cookie consent for an appropriate period of time.

Documenting and reviewing our Cookie use

☐ We have documented all of the above;

☐ We have built in an appropriate review period.

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