Assessment Checklist for Deemed Consent by Notification

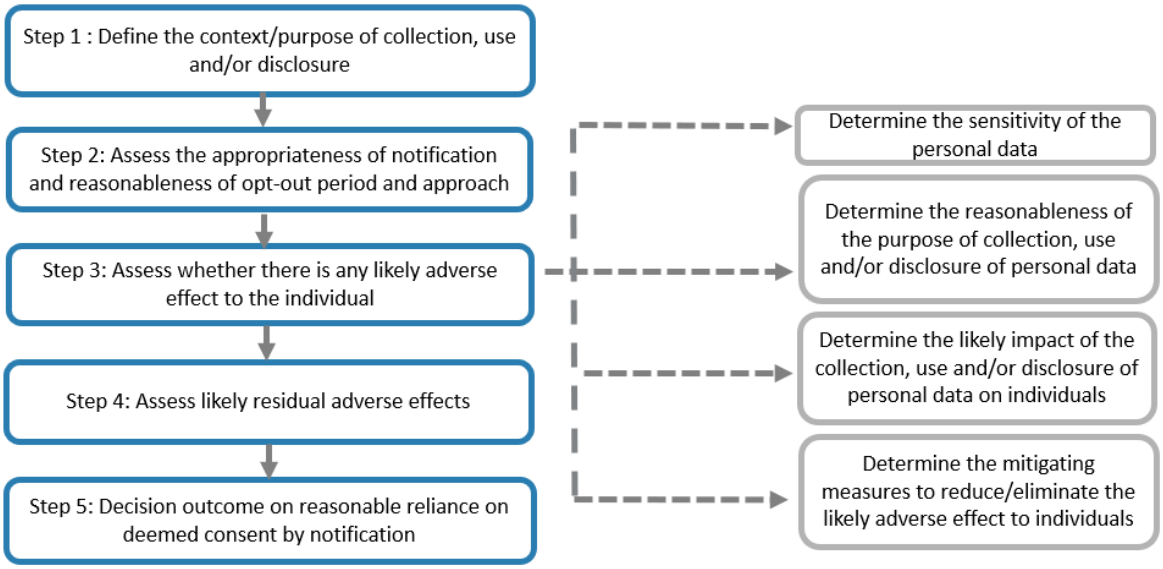
An organisation may deem that an individual has given consent for a purpose when the individual is notified of the collection, use or disclosure of his personal data and how he may opt-out, but he does not opt-out within a specified period (referred to as "deemed consent by notification").

This checklist is intended to guide organisations in assessing whether organisations may rely on deemed consent by notification to collect, use or disclose personal data, and if so, the appropriateness of the notification to individuals and reasonableness of the opt-out period.

When using this checklist to assess whether there is any likely adverse effect to the individual and any residual effects after applying reasonable mitigating measures, organisations should rely on the assessment in steps 1 to 3. Justifications should be provided for each answer, with an evaluation documented in the decision outcome.

It is not mandatory for organisations to use this checklist, and organisations may wish to conduct their own assessment to justify their reliance on the deemed consent by notification. The assessment should minimally cover the 4 main areas of (1) purpose, (2) appropriateness of notification and reasonableness of the mode and period for opt-out, (3) assess any likely adverse effect on the individual, and (4) the final decision outcome.

Figure 1: The flow for conducting deemed consent by notification assessment



S/N	Step 1: Define the context/purpose of collection, use and/or disclosure		
1	What is the purpose?	*Note: deemed consent by notification cannot be relied on for sending of direct marketing messages.*	
2	List the types of personal data that will be collected, used, and/or disclosed for this purpose.		
3	Describe how the personal data will be collected, used, and/or disclosed.		
4	What are the objectives of the above collection, use, and/or disclosure?		
5	Is the collection, use or disclosure on a one-off or a continuous basis?	*[If continuous, please state occurrence.*]	
	Step 2: Define notification approach and opt-out period		
6	How are individuals being notified of the purpose?	*[By default, organisations should consider employing direct forms of notification to minimise the risk that individuals do not see the notification.]*	
7	What is the opt-out period?	*[Organisations should consider the purpose for which and the manner in which the organisation intends to collect, use or disclose the personal data, and whether it is time-sensitive. This may also depend on the communications channels and the opt-out method used.]*	
8	Are the mode and period for opt-out reasonable?	Y/N	*[Please justify. Organisations should consider whether individuals are likely to have seen the notification.]*
	Step 3: Assess whether there is any likely adverse effect to the individual		
	Sensitivity of personal data		
9	Is the personal data being collected, used or disclosed (as		

	listed in Step 1) of a sensitive nature?		
	Reasonableness of the purpose of collection, use or disclosure of personal data		
10	How extensive is the collection of data?	*[Please describe if there is any large-scale collection data, factoring in both the volume of data collected and number of types of data fields collected.]*	
11	How reasonable is the purpose of collection, use, or disclosure of the personal data?		
	Likely adverse effect to the individual		
12	What are the reasonably foreseeable adverse effects to the individual (e.g., financial, social, physical, psychological effect)?		
13	Will you use other information from other datasets to make predictions or decisions?	Y/N	*[If yes, please describe the datasets used for merger and whether the individual is aware that you are in possession of the dataset. Please also state the types of decisions/predictions that would be made with the data.]*
14	Will the predictions or decisions exclude, discriminate against, defame, or harm the individual?	Y/N	*[Please state the types of predictions that would be made with the data and justify why these may or may not be accurate.]*
15	What is the likelihood and severity of any potential impact to the individual?	*[You should consider this relative to prevailing social norms. Refer to paragraph 2.34 of the main Advisory Guidelines for a list of considerations.]*	
16	How did you provide the details of a contact who can provide the individual with more details of the collection, use or disclosure of the personal data?	*[Please describe how the details are provided.]*	
	Mitigating measures		
17	Can you adopt any measure to mitigate, eliminate or reduce the likelihood of the adverse effect?	Y/N	*[If yes, please describe the measures and justify how the measures are able to mitigate or reduce the likelihood of the adverse effect.]* *[If no, please state the reasons for why not.]*
	Step 4: Assess likely residual adverse effect		
18	What are the likely residual adverse effects to the individual after applying measures to mitigate the adverse effect specified above?		

	Decision Outcome		
19	Can you rely on deemed consent by notification to collect, use or disclose personal data for this purpose?	Y/N	*[Organisations should only proceed if there is no residual adverse effect arising from relying on deemed consent by notification.]*
20	Are there any further actions to be taken?	Y/N	*[If yes, please describe.]*
21	Outcome date		

22	Completed by	
23	Endorsed by	
24	Agreed by	*[In line with the Accountability principle, the assessment should be reviewed by the appropriate members of management with sufficient authority.]*