

# GUIDANCE on: Photographing and Filming Children and Young People including Copyright

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Background .....	3
Data Protection .....	3
Copyright Law .....	3
Obtaining consent .....	4
Circumstances where consent is not required.....	4
Appropriate Use .....	5
Identification and Purpose.....	5
Storage.....	5
Images captured by Parents and Members of the Public.....	5
Images captured by the Media .....	6

## **Background**

The purpose of this policy is to ensure that all establishments within Education take a consistent approach to the photographing and filming of children and young people.

It's important that children and young people feel happy with their achievements and have photographs and films of their special moments. Family and friends also want to be able to share the successes of their children when they have been part of a special event or activity.

However, it also important to be aware of child protection and safeguarding issues when people are taking photographs or filming at events.

These are some of the risks associated with photographing and/or filming children and young people:

- the collection and passing on of images which may be misused;
- children may be identifiable when a photograph is shared with personal information; and
- inappropriate photographs or recorded images of children

In addition we need to adhere to the Copyright, Designs and Patents Act 1988 in terms of replicating pupil work on the internet.

## **Who this policy covers**

All staff are responsible for implementing this policy in Argyll and Bute Council premises. Staff should challenge any individual who arouses suspicion by attempting to photograph or film children on Argyll and Bute Council premises.

## **Data Protection**

Photographic and filmed images of children and young people are their personal data. This means Data Protection law is relevant. Data Protection law establishes a framework of rights and duties which are designed to safeguard personal data, as well as giving rights to individuals. If you want take/use film or photographs of children or young people (that are not for purely personal use e.g. as a parent) you must have a legal basis to do so. One legal basis that allows you to take/use film or photographs is consent. Consent should only be sought where an individual has a real choice. To obtain consent the steps outlined in this document should be followed.

## **Copyright Law**

The *Copyright, Designs and Patents Act 1988* gives the creators of work such as stories, songs and musical arrangements, rights to control the ways in which their work may be used. The rights cover: broadcast and public performance, copying, adapting, issuing, renting and lending copies to the public. In many cases, the creator will also have the right to be identified as the author. When we showcase a piece of art on the school wall we are not 'copying' it as it is the original piece being displayed. However, work posted on the internet could be deemed as a 'copy' of the original and pupils have the right to stop it being shown online. We need consent for

it to be shared online. If consent is granted the pupil also has the right to be named as the author, if they wish to do so.

## **Obtaining consent**

In Scotland a child reaches legal capacity at 16. However, the law recognises that in most cases from 12 years of age a child will be able to express an opinion about how photos/films of their image will be used. This means that you need to:

- for children under 12 years of age you will need to get explicit written consent from the person who holds parental responsibilities to take and use photographs/films/work of their child;
- consult with children over 12 years of age but under 16 years of age as to how photographs/films of their image or work will be used and get explicit written consent from the person who holds parental responsibilities to take and use photographs/films of their child or child's work; and
- for young people over 16 years of age you will need to ensure they are aware that they can provide their own consent to take and use photographs/films of them or their work and to determine if they wish to be named as the creator of their work.

As part of this exercise it will be necessary to check who holds parental responsibilities for the child. When a child is looked after away from home it may not be appropriate to contact the parent directly. Head Teachers/Managers should agree with social works services appropriate arrangements for seeking consent in these instances and advise staff accordingly. Special consideration should be given to children and young people who are the subject of a non-disclosure order.

The consent form attached at Appendix 1 should be used to obtain consent from the person who holds parental responsibilities or from the young person themselves if they choose to provide their own consent at the age of 16 and above.

## **Circumstances where consent is not required – Curricular or Educational Activities**

Consent is not the only legal basis that allows you to take/use film/photographs under General Data Protection Regulation. You can take/use film/photographs when it is necessary for the exercise of a statutory function (such as providing education). This would include, for example, filming children as part of a Drama or Physical Education examination. Any photography or film footage for these purposes must be treated confidentially as part of a child's academic record and should not be made public unless you also have signed consent to do so.

## **Images captured by Employees of Argyll and Bute Council**

If consent is not granted, for online publication and in particular social media sites, then the photo with the pupil in it should not be published. It is not acceptable to obscure that child or young person's identity with an emoji face or picture of a flower. The pupil(s) should be strategically placed so they can be cropped from the photo for publication. However, once it has been established that you have a clear legal basis

for taking/ using photograph/ filming children or young people employees should adhere to the following guidelines.

## **Appropriate Use**

Only use images of children and young people in suitable clothing to reduce the risk of inappropriate use. No images should be taken of children or young people that capture them in what are commonly understood as non-public activities like toileting or changing clothes, or which show body parts not usually visible in public settings. Photography and filming is not permitted in any swimming pools/lessons. Images involving groups should be about the activity, not the individual child and close-up images should be avoided. Images should not show children and young people in breach of rules or behaving in a reckless or dangerous fashion.

## **Identification and Purpose**

The overriding priority is to ensure that photography/filming does not lead either directly or indirectly, to anything that may potentially endanger the safety of children and young people. Unless you have express written consent to do so do not use the pupil's name in photographic captions. Additional information relating to a child or young person's hobbies and interests should not be included as this may lead to them being identified and could be used to learn more about a child or young person prior to grooming them for abuse.

In sharing a photo or video of a pupil's work, the child or young person should not appear in the photo or video. You should only name them as the creator of the work if the parent has given consent for their name to be used. Consideration should be given to minimise the information provided in conjunction with the pupil name e.g. do not include the year stage or any other information unless it is necessary to determine between pupils with the same name.

It is important to note that consent for photos and videos to be shared online and consent to name a pupil as the author of a piece of work should not result in pupils being named in photographic captions. We do not hold consent to name pupils in their own photos, just to be named as author of their own work to meet copyright law.

## **Storage**

Images should never be stored in personal computers/cameras. They must be stored in a secure location to protect them from damage or being misused. Hard copies of images should be kept in lockable cabinets when not in use for displays etc. Electronic images should be in a protected folder with restricted access. This will ensure that no one can accidentally use them without being clear who they belong to and the context in which they may be used. If the photos are taken on a digital camera and subsequently transferred the original images must be deleted from the device and the copied images stored securely.

Images should not be stored on unencrypted portable equipment such as laptops, memory sticks and mobile phones.

## **Images captured by Parents and Members of the Public**

Argyll and Bute Council understands that parents and families wish to record their child's achievements. Parents and carers are entitled to take photographs and videos of their child for their personal use. This means that any photographs/ videos taken within Argyll and Bute Council establishments for purely personal use should

not be uploaded onto public internet websites or social media sites where other children and young people have also been captured on film or photographs.

Argyll and Bute Council has very little control over what parents/ members of the public do at school events. When schools are putting on events, at which other parents or members of the public are going to be present, then they should make parents aware of this and ensure they are comfortable with this and request that parents only take photos for their own personal use. Argyll and Bute Council can advise parents and carers of this guidance but are unable to enforce it.

The following text has been created as an example:

Dear Audience, please be assured that you can take photos and videos of your child at this event, however you must ensure that any photos or videos you upload publicly, such as on social media sites, contain your own child's image only. This is for reasons of child protection and safeguarding and will protect the identity of other students in the school whose images are not to be made public or shown on social media.

### **Images captured by the Media**

Argyll and Bute Council may invite the press/media to publish photos/film of children and will seek consent for this. However, any external press/media organisation taking film/photographs have the responsibility to ensure they have the necessary consents/legal basis for doing so.

Photographs taken by external press/media are the property of that media organisation and Argyll and Bute Council can have no control over what the press/media organisation chose to do with the film/photographs.

## **APPENDIX 1: Privacy Notice and Consent Form**

### **Education Service**

#### ***Who will process your information?***

In order to deliver Education Services we need to collect, store, use, share and dispose of personal data. This is called data processing. When we process your personal data we must comply with data protection legislation. This consent form explains how we will use your personal data within the Education Service of Argyll and Bute Council and allows you to confirm your consent to our processing your information by signing this form.

The Council is registered with the Information Commissioner's Office as the 'Data Controller' for the personal data you provide to us. The Data Protection Officer, who is responsible for ensuring personal data is managed in accordance with data protection legislation can be contacted at [data.protection@argyll-bute.gov.uk](mailto:data.protection@argyll-bute.gov.uk)

**Telephone:** 01546 605522

#### ***What information will you process?***

The information we collect from you will include photos, videos, and audio recordings of you or your work during your school life. We may also use your forename and surname when showcasing your work. The personal data you provide may also include special category information about you (also known as "sensitive personal data") in this case health or medical information, racial or ethnic origin.

#### ***Why is my information being processed?***

Your information is being collected in order to support the Council in delivering services to you, as noted above. It's important that children and young people feel happy with their achievements and have photographs, audio recordings, and films of their special moments and achievements. Family and friends also want to be able to share the successes of their children when they have been part of a special event or activity.

However, it also important to be aware of child protection and safeguarding issues when people are taking photographs or filming at events.

#### ***What is the lawful basis for this processing?***

Article 6(1)(a) – Consent

When processing special category information (as noted above) we are doing so for reasons of substantial public interest for aims that are proportionate and which contain appropriate safeguarding measures

#### ***Circumstances where consent is not required – Curricular or Educational Activities***

Consent is not the only legal basis that allows us to take/use film/photographs/audio recordings under General Data Protection Regulation. We can take/use film/photographs/audio recordings when it is necessary for the exercise of a statutory function (such as providing education). This would include, for example, filming pupils as part of a Drama or Physical Education examination. Any photography, audio recording, or film footage for these purposes must be treated confidentially as part of a pupil's academic record.

## **Copyright Law**

The *Copyright, Designs and Patents Act 1988* gives the creators of work such as stories, songs and musical arrangements, rights to control the ways in which their work may be used. The rights cover: broadcast and public performance, copying, adapting, issuing, renting and lending copies to the public. In many cases, the creator will also have the right to be identified as the author. When we showcase a piece of art on the school wall we are not 'copying' it as it is the original piece being displayed. However, work posted on the internet could be deemed as a 'copy' of the original and you have the right to stop it being shown online. You also have the right to be named as author of the work if you choose to do so.

## ***Who will have access to my personal information?***

We will share your photos, videos, audio recordings and work with Joint Partnership bodies only if you have given your consent for this processing to happen as detailed in this consent form.

Joint Partnership bodies are Live Argyll and Health for the purposes of promoting activities run in conjunction with the Council.

## ***Where will we display your photos, videos and work?***

- School handbook, School newsletters, Displays or notice boards, website or other promotional material
- Year Books
- DVDs of school shows, leavers dances, and residential trips
- Externally on social media for school and council, including technology/apps designed for sharing photos, audio recordings and videos with parents
- Externally on council and school website and in published reports/press releases/newsletters/blogs/vlogs/podcasts and school handbooks
- Externally in local and/or national media as requested by Education Service
- Class and/or year photographs will be kept by schools and in Council archives indefinitely

We will not share any personal data which is not connected with the delivery of the service(s) noted above. By law, we may be required to share personal data for the prevention or detection of crime. These requests will generally come from the police, or another law enforcement agency.

It is important to note that once photos, videos, audio recordings and work are made public either on websites or social media they may be shared more widely and cannot be retrieved if you withdraw your consent.

You should also be aware that your data will be stored on servers located in the United Kingdom. There may be times when data is processed outwith the European Union and although they may not be subject to the same data protection laws as in the UK, we will take steps to make sure these companies provide an adequate level of protection in accordance with UK data protection laws. We will take all reasonable steps to ensure that your data is kept securely and more information on how this is done can be requested from the Data Protection Officer.

## ***How long will my information be kept?***

We will not keep your personal data for any longer than it is needed, and will dispose of any records (both paper and electronic) in a secure way. We will usually keep your information



for a maximum of 1 academic year after you leave your current establishment, after this period your photos, videos, audio recordings and work will no longer be used in any newly printed material. Class and/or year photographs may be displayed in schools and kept in council archives indefinitely for historical purposes therefore you may wish to exclude yourself from group photographs based on this. More information on the retention policy and procedure can be obtained from the Data Protection Officer if required.

#### Automated Decision Making

*No automated decision making will take place.*

#### **YOUR RIGHTS**

When you provide information, you will have the following rights:

- to withdraw consent at any time, *to do so please contact the Data Protection Officer*
- to lodge a complaint with the Information Commissioner's Office – *see below for details*
- to request access to your personal data – *please contact the Data Protection Officer*
- to data portability
- to request rectification or erasure of your personal data, as far as the legislation permits – please contact the Data Protection Officer and provide details of what data you wish to be rectified or erased.

You can find out more about your rights in relation to data protection here: [www.argyll-bute.gov.uk/data-protection](http://www.argyll-bute.gov.uk/data-protection) or from the Data Protection Officer by telephone or in writing, as detailed above.

The ICO is the UK's independent body set up to uphold information rights; you can request further information or register a complaint from:-

Information Commissioner's Office  
Wycliffe House, Water Lane, Wilmslow,  
Cheshire, SK9 5AF  
Telephone: 0303 123 1113  
Email: [casework@ico.org.uk](mailto:casework@ico.org.uk)

The Information Commissioner's Office –  
Scotland  
45 Melville Street, Edinburgh, EH3 7HL  
Telephone: 0303 123 1115  
Email: [Scotland@ico.org.uk](mailto:Scotland@ico.org.uk)

If you require this consent form in any other format please contact School Support on 01369 704000

**Please ensure you complete the consent form overleaf.  
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SAMPLE

## IMPORTANT

<b>School Name</b>			
<b>Pupil Name</b>		<b>Year Stage</b>	

By signing this form I consent for photographs, videos and work to be processed, including special category data (if included) as detailed in this notice (please tick yes or no in the four separate sections as applicable):

1.	Yes	No
Yes, I consent to the publishing of photographs/videos/audio recordings taken of my child in all instances shown below:  School handbook, school newsletter, Year Books, Displays/Notice Boards within the Council, Council and School website, Promotional materials, DVDs of shows, leavers dances and residential trips		

Images displayed in the ways noted above may be seen by members of the public.

### Social Media

*Please note that once published on social media such as Facebook and Twitter, Argyll and Bute Council does not have control of the storage or use of images which may be seen all over the world.*

2.	Yes	No
Yes, I consent to the publishing of photographs/videos/audio recordings taken of my child in all instances shown below:  Council and School Twitter, Council and School Facebook, School YouTube, Council and School Instagram or other video streaming/video hosting websites, blog/vlog/podcast/other, in local and/or national media at the request of Education		

Education Service may share photographs/films/audio recordings with the press, for example, prize giving or P1 class photos and require your consent to do this. It is important to note that press and media organisations may publish photos online and to their social media sites also.

### Joint Partnership Sharing of Photos and Videos

3.	Yes	No
Yes, I consent to the sharing and publishing of photographs/videos/audio recordings taken of my child with Live Argyll and Health.		

**Please turn over for section 4**

### Copyright law: Copyright, Designs and Patents Act 1988

We need to ask you for your consent to share pictures and videos of your work on the internet e.g. on school social media sites and school and council websites.

4	Yes	No
Yes, I consent to the copying of my child's work by sharing a photo/video/audio recordings of the work only (no photo/video footage of pupil or audio recording of the pupil's voice to be included) to social media sites, school and council websites		
Yes, I consent to my child being named as the 'author' of the work on social media, school and council websites		

You can change your mind about giving or refusing consent at any time. If you no longer want your child's image or work to be used let the school know by email or in writing.

If images are taken by local press/media, or parents/guests, at a public event or school event, Argyll and Bute Council will have no control of the storage or use of these images. Parents should only take photos/videos of their own child(ren) for their own personal use.

#### **IMPORTANT (cont)**

I confirm my responses at the sections number 1 – 4 above by providing my signature below:

Signature of Parent/Guardian or young person aged 16 or over	
Print Name	
Date	

OR

Signature of authorised third party*	
Print Name	
Date	

**\*NOTE:** please add a note below outlining why you are signing this consent form as a 3<sup>rd</sup> party and if relevant, provide evidence of your authority to act on behalf of the person making the enquiry or service request e.g. copy of Power of Attorney certificate.

Authorised third party information
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