

Lawful basis and claim limitation annex

Companion to the retention schedule and checklist, for single-jurisdiction and cross-border employers

This annex sets out two things. First, the Article 6 (and where relevant Article 9) lawful basis under GDPR for each record category covered in the retention schedule. Second, the time limits within which employees can bring the main categories of claim, the forum that hears them, and the records that defend against them.

Used together with the retention schedule and checklist, this annex answers the questions a data protection regulator or employment tribunal is most likely to put to an employer about HR data: what is held, what lawful basis supports it, and how the retention period maps to defending potential claims.

Two GDPR regimes apply across the island. ROI processing is governed by EU GDPR ((EU) 2016/679) and supervised by the Data Protection Commission. NI processing is governed by UK GDPR (as incorporated by the Data Protection Act 2018) and supervised by the Information Commissioner's Office. The Article numbers and the substance are largely identical. The statute and the supervisory authority are not.

Who this is for, pick your scenario

If your employer and your employee are in the same jurisdiction, you only need to read the relevant column in Part 2. If they are not, the cross-border routing panel later in this annex tells you which column applies to which employee, and where both regulators sit.

If you are...	Which GDPR regime and which regulator	Which columns and rows to use
NI employer of NI staff	UK GDPR for processing; ICO supervises. NI claims to Industrial Tribunal (Fair Employment Tribunal for religion/political opinion); civil claims under Limitation (NI) Order 1989.	Use the NI columns in Part 2.
ROI employer of ROI staff	EU GDPR for processing; DPC supervises. ROI claims to WRC and Labour Court; civil claims under Statute of Limitations Act 1957.	Use the ROI columns in Part 2.
ROI employer of NI staff	Two GDPR regimes apply at once. NI processing falls under UK GDPR (ICO). Head office processing in ROI falls under EU GDPR (DPC). For the employee, NI claim windows and forums apply (country of habitual work, Rome I retained EU law).	Use the NI columns for that employee's claim windows. Retention defends to the longer of the two limitation periods.
NI employer of ROI staff	Two GDPR regimes apply at once. ROI processing falls under EU GDPR (DPC). Head office processing in NI falls under UK GDPR (ICO).	Use the ROI columns for that employee's claim windows. Retention defends to the longer of the two limitation periods.

If you are...	Which GDPR regime and which regulator	Which columns and rows to use
	For the employee, ROI claim windows and forums apply (country of habitual work).	

Use the decision handout to justify holding the data, and the retention schedule to determine how long to keep it.

Part 1. Lawful basis matrix

Article 6 of GDPR sets out six lawful bases for processing personal data. Article 9 adds further conditions where the data is special category (health, racial or ethnic origin, religious belief, trade union membership, biometric or genetic data, sex life or sexual orientation). For employee data, the basis is rarely consent because of the power imbalance between employer and employee.

The Article basis is the same under EU GDPR and UK GDPR. The supervisory authority differs (DPC for ROI processing; ICO for NI processing). The supplementary conditions for special category data sit in national derogations: Section 36 and Part 5 of the Data Protection Act 2018 in Ireland, and Schedule 1 of the Data Protection Act 2018 in the UK. The lists overlap heavily but read differently in places, particularly around health, occupational pension scheme membership, and Article 9(2)(b) employment-law obligations. Where you process special category HR data, name both the Article 9 condition and the national derogation condition in your ROPA.

Where the basis is Article 6(1)(f) legitimate interest, complete a documented Legitimate Interests Assessment before relying on it. The LIA has three parts: a purpose test (is the legitimate interest real), a necessity test (is the processing actually needed for it), and a balancing test (does the interest outweigh the data subject's rights). Both the DPC and the ICO expect to see a written LIA on inspection.

Record category	Article 6 basis	Article 9 basis (special category)	Reason
Recruitment			
Job adverts and unsuccessful CVs	(f) legitimate interest	n/a (do not collect special category at this stage)	Recruiting for the role, balanced against candidate rights. Retain only as long as needed to defend a claim.
Right to work documents	(c) legal obligation	n/a	Employment Permits Acts 2003-2024 (ROI); Immigration, Asylum and Nationality Act 2006 (NI).
Garda vetting / AccessNI disclosures	(c) legal obligation	(b) employment law obligations; (g) substantial public interest	National Vetting Bureau (Children and Vulnerable Persons) Acts 2012-2016 (ROI); Safeguarding Vulnerable Groups (NI) Order 2007.

Record category	Article 6 basis	Article 9 basis (special category)	Reason
Article 55 monitoring form (NI 11+)	(c) legal obligation	(b) employment law obligations	Fair Employment and Treatment (NI) Order 1998, Article 55. Failure to retain is a summary offence.
Onboarding and contract			
Signed contract, statement of terms	(b) contract	n/a	Necessary to perform the employment contract.
PPSN (ROI) / National Insurance number (NI)	(c) legal obligation	n/a	Taxes Consolidation Act 1997 (ROI); HMRC payroll regulations (NI). PPSN use restricted under Social Welfare Consolidation Act 2005, s.262.
Bank details	(b) contract	n/a	Necessary to pay wages owed under the contract.
Emergency contact details	(f) legitimate interest, with employee acknowledgement	n/a	Health, safety and welfare of employees in workplace emergencies.
Privacy notice, handbook sign-off	(c) legal obligation	n/a	Article 13 GDPR transparency obligation, accountability principle.
Auto-enrolment pension records	(c) legal obligation	n/a	Automatic Enrolment Retirement Savings System Act 2024 (ROI), in force 1 January 2026 via NAERSA / My Future Fund. Pensions Act 2008 (UK / NI).
Pay, working time, leave			
Payroll and tax records	(c) legal obligation	n/a	Taxes Consolidation Act 1997 (ROI); HMRC payroll rules (NI).
Working time and annual leave records	(c) legal obligation	n/a	Organisation of Working Time Act 1997 (ROI); Working Time Regulations (NI) 2016.

Record category	Article 6 basis	Article 9 basis (special category)	Reason
Parental, paternity, adoptive, maternity leave	(c) legal obligation	(b) employment law obligations (where pregnancy or family status involved)	Parental Leave Act 1998, Paternity Leave and Benefit Act 2016, Maternity Protection Acts, Adoptive Leave Act 1995 (ROI); ERO 1996 and SMP/SPP/SAP regulations (NI).
Sick leave and statutory sick pay records	(c) legal obligation	(b) employment law obligations; (h) occupational medicine	Sick Leave Act 2022, currently 5 days at 70%, cap €110/day; 2026 step paused (ROI). SSP General Regs (NI) 1982.
Performance, conduct, training			
Performance reviews and 1:1 notes	(b) contract; (f) legitimate interest	n/a	Performance management is contractual; legitimate interest in managing the workforce, balanced against employee rights.
Disciplinary and grievance records	(b) contract; (f) legitimate interest; (c) legal obligation	n/a (unless conduct involves special category data, e.g. ill-health absence)	Necessary for fair procedures under employment law (WRC Code of Practice for ROI; LRA Code for NI), internal accountability, and defending claims.
Training records and certifications	(c) legal obligation; (b) contract	n/a	Statutory training duties under safety, equality and sector-specific regulations.
Health and safety			
Workplace accident records	(c) legal obligation	(h) occupational medicine; (i) public interest in public health	Safety, Health and Welfare at Work Act 2005 and General Application Regs 2007 (ROI); RIDDOR (NI) 1997.
Occupational health and medical records	(c) legal obligation	(h) occupational medicine; (b) employment law obligations	Statutory health surveillance, hazardous substance exposure, fitness for work assessments.
DSE / homeworker assessments	(c) legal obligation	n/a	SHWW (General Application) Regs 2007, Chapter 5 (ROI); Health and Safety (DSE) Regulations (NI) 1992.

Record category	Article 6 basis	Article 9 basis (special category)	Reason
Under 18s register	(c) legal obligation	n/a	Protection of Young Persons (Employment) Act 1996 (ROI); Employment of Children Regs (NI) 1996; Children (NI) Order 1995.
CCTV footage of staff	(f) legitimate interest	n/a (unless footage captures medical incidents)	Property and people protection, with documented balancing test and DPIA. DPC CCTV guidance (ROI); ICO Surveillance Camera Code 2022 (NI). DPIA mandatory before deployment; signage at the point of capture; retention rule documented per ICO Surveillance Camera Code and DPC CCTV guidance.
Post-employment			
Personnel file (post-termination)	(c) legal obligation; (f) legitimate interest	n/a (medical removed to separate restricted file)	Defending claims within the relevant limitation period, statutory record retention.
Pension records	(c) legal obligation	n/a	Pensions Act 1990, s.59 (ROI); Pensions (NI) Order 1995 and Occupational Pension Schemes (Scheme Administration) Regulations (NI) 1997, Reg 13.
References given to future employers	(f) legitimate interest	n/a	Mutual interest with prospective employer; retain copy to defend defamation (1 year) or negligent misstatement (6 years).
Settlement and compromise agreements	(b) contract; (f) legitimate interest	n/a	Performance and enforcement of the agreement, including ongoing obligations (restrictive covenants, IP).
Governance and accountability			

Record category	Article 6 basis	Article 9 basis (special category)	Reason
Record of Processing Activities (ROPA)	(c) legal obligation	n/a	Article 30 GDPR. The sub-250 exemption does not apply to most HR processing: processing must be both occasional AND exclude special category data. HR is neither.
Legitimate Interests Assessment (LIA)	(c) legal obligation (accountability principle, Art 5(2))	n/a	Required wherever Article 6(1)(f) is the basis. Three parts: purpose test, necessity test, balancing test.
Data Protection Impact Assessment (DPIA)	(c) legal obligation	n/a (records the assessment of special category processing where relevant)	Article 35 GDPR. Mandatory for HR where processing is likely to result in high risk: AI-driven CV screening, large-scale employee monitoring, biometrics, sensitive psychometrics, location tracking, sentiment analysis. DPC s.35(4) list and ICO Art 35(4) list apply.
Personal data breach log	(c) legal obligation	n/a	Article 33 GDPR. 72 hours from awareness to notify DPC or ICO. Internal log kept regardless of whether the breach was reportable.

Part 2. Claim limitation table

For each claim type below, the time limit is the employee's window to bring the claim. The record column lists what the employer needs to have on file to defend against it. Retention periods in the schedule are calibrated to these limitation periods.

Time limits can be extended in defined circumstances, reasonable cause in ROI, just and equitable in NI, late knowledge in personal injury under the Statute of Limitations (Amendment) Act 1991 (ROI) and analogous NI provisions. Where the retention schedule shows a longer period than the basic time limit, that accounts for these extensions.

Claim type	ROI time limit	NI time limit	Forum	Record that defends
Statutory employment claims				
Unfair dismissal	6 months from dismissal, extendable to 12 months for reasonable cause. Qualifying service: 12 months continuous service (Unfair Dismissals Acts 1977-2015, s.2(1)(a)); exceptions for trade union, pregnancy, protected disclosure.	3 months less one day from effective date of termination. Qualifying service: 1 year continuous service (ERO 1996, Art 140); same statutory exceptions.	ROI: WRC. NI: Industrial Tribunal (LRA early conciliation first).	Disciplinary records, contract, dismissal letter, investigation notes.
Discrimination	6 months from most recent act, extendable to 12 months	3 months less one day from act complained of (just-and-equitable extension possible)	ROI: WRC. NI: Industrial Tribunal (Fair Employment Tribunal for religion/political opinion).	Recruitment records, performance records, contemporaneous management notes.
Equal pay	6 months from leaving role; can claim 3 years of arrears	6 months from end of employment (Equal Pay Act (NI) 1970)	ROI: WRC. NI: Industrial Tribunal.	Job evaluations, pay records, role descriptions.
Working time (rest, breaks, leave)	6 months from contravention,	3 months less one day from contravention	ROI: WRC. NI: Industrial Tribunal.	Working time records, leave records, rosters.

Claim type	ROI time limit	NI time limit	Forum	Record that defends
	extendable to 12 months			
Payment of Wages disputes	6 months from deduction, extendable to 12 months	3 months less one day from deduction	ROI: WRC. NI: Industrial Tribunal.	Payslips, contract, payroll records.
Redundancy entitlement	1 year from dismissal	6 months from dismissal (statutory); 3 months for unfair selection claim to Industrial Tribunal	ROI: WRC. NI: Industrial Tribunal.	Redundancy calculations, selection criteria, consultation records.
Whistleblowing / protected disclosure	6 months from detriment or dismissal, extendable to 12 months (Protected Disclosures Act 2014 as amended by the 2022 Act transposing EU Dir 2019/1937). Employers with 50+ workers must operate an internal reporting channel.	3 months less one day from detriment or dismissal (Public Interest Disclosure (NI) Order 1998). The EU Directive has not been transposed in NI: no internal channel obligation reaches a NI employer of NI-only staff.	ROI: WRC and Office of the Protected Disclosures Commissioner. NI: Industrial Tribunal.	Disclosure log, investigation records, contemporaneous management notes.
Article 55 monitoring failure (NI 11+)	Not applicable	Summary offence (no civil claim window in the usual sense)	NI: criminal court / Equality Commission for NI enforcement.	Monitoring forms, annual returns, triennial review.
Civil claims				
Breach of contract	6 years from breach (Statute of Limitations Act 1957)	6 years from breach (Limitation (NI) Order 1989)	Civil courts (Circuit / High Court in ROI; County / High Court in NI).	Contract, written statement of terms, performance records, dismissal records.

Claim type	ROI time limit	NI time limit	Forum	Record that defends
Personal injury	2 years from cause of action or date of knowledge (Statute of Limitations (Amendment) Act 1991)	3 years from cause of action or date of knowledge	Civil courts.	Accident records, occupational health records, training records, risk assessments.
Defamation (references)	1 year from publication (Defamation Act 2009, s.38)	1 year from publication (Defamation Act (Northern Ireland) 2022)	Civil courts.	Copy of reference given, supporting performance evidence.
Negligent misstatement (references)	6 years (Statute of Limitations Act 1957; date of knowledge under 1991 Amendment Act may extend)	6 years (Limitation (NI) Order 1989)	Civil courts.	Copy of reference given, supporting performance evidence.
Data protection and regulatory				
GDPR complaint (Subject Access, deletion, etc.)	No time limit on complaints to DPC. Civil action under Data Protection Act 2018: 6 years	No time limit on complaints to ICO. Civil action under DPA 2018: 6 years	DPC (ROI) / ICO (NI); civil courts.	Retention policy, SAR log, DPIA records, lawful basis documentation, ROPA.
Personal data breach	72 hours from awareness to notify DPC (EU GDPR Art 33)	72 hours from awareness to notify ICO (UK GDPR Art 33)	DPC (ROI); ICO (NI). Affected individuals notified without undue delay where high risk.	Breach log, incident response notes, DPIA where relevant.

Cross-border claim routing

Which limitation period and which forum apply when the employer and the employee sit in different jurisdictions, and the data protection consequences that follow.

Scenario	Which limitation period and forum apply	Defensive records to keep
ROI employer, ROI-based employee	ROI rules: WRC for most statutory heads (6 months, extendable to 12). Civil claims to Circuit/High Court, 6 years from breach (SoL 1957).	Use the ROI column in Part 2. Build records to defend to the longer of statutory + civil windows.
NI employer, NI-based employee	NI rules: Industrial Tribunal / Fair Employment Tribunal for most statutory heads (3 months, extendable). Civil claims to County/High Court (NI), 6 years (Limitation (NI) Order 1989).	Use the NI column in Part 2.
ROI employer, NI-based employee	NI rules apply to the employee. Country of habitual work governs under Rome I (retained EU law in UK). Statutory claims go to Industrial Tribunal / FET. Civil claims to County/High Court (NI).	Use the NI column of Part 2 for that employee. Maintain payroll records to HMRC and Revenue standards (employer is registered with both).
NI employer, ROI-based employee	ROI rules apply to the employee. Statutory claims go to the WRC; civil claims to Circuit/High Court in ROI.	Use the ROI column of Part 2 for that employee. Maintain payroll records to Revenue and HMRC standards.
Either cross-border employer	You are exposed in TWO data protection regimes at once. EU GDPR (DPC) for processing in ROI; UK GDPR (ICO) for processing in NI. The supervisory authority for an employee complaint is the regulator of the country in which the employee works.	Cite EU/UK adequacy as the transfer mechanism in your ROPA; maintain a breach log and lawful basis register that covers processing in both jurisdictions; route SAR escalations to the right regulator.

Practical note for the cross-border employer: maintain payroll records to the standard of both Revenue and HMRC, even if you only run one of those schemes for any given employee. The two tax authorities can exchange information and the audit trail you build for one defends the other.

Subject Access Requests, the practical bits

Most SARs in HR arrive after a leaver dispute. Two questions cause most of the problems.

Time limit

One month under Article 12(3) GDPR. Extendable by up to two further months where the request is complex or there are numerous requests, with notice to the data subject within the first month. 'Complex' is read narrowly, having a lot of records is not enough on its own.

Third party data in the response

Personnel files routinely contain references that name third parties, managers' notes mentioning other employees, and investigation records covering more than one person. Redact third-party identifying information unless the third party has consented, or it is reasonable to disclose without consent (Article 15(4) GDPR; ICO and DPC guidance). The default is redact.

Statutory exemptions you can apply

UK / NI processing: DPA 2018 Schedule 2. Common HR-relevant heads are Paragraph 5 (legal proceedings), Paragraph 8 (negotiations), Paragraph 16 (management forecasting and planning), and Paragraph 24 (confidential references given). Exemptions are not blanket, apply to the specific record.

ROI processing: DPA 2018 Section 60 and the supplementary schedules. Equivalent grounds for legal professional privilege, ongoing investigations, negotiations and confidential references.

Routing for cross-border

Where the employee is based in ROI, escalation goes to the DPC. Where the employee is based in NI, escalation goes to the ICO. A cross-border employer can receive both. Treat each request under the law of the country in which the employee processes.

How to use this annex

Map each record to a row in Part 1

If you cannot identify the Article 6 basis, you should not be holding the record. Where the basis is legitimate interest, complete a documented Legitimate Interests Assessment (LIA) before relying on it. The DPC and the ICO both expect a written three-part LIA on file.

Maintain a ROPA regardless of headcount

Article 30(5) GDPR exempts employers under 250 from a Record of Processing Activities, but the exemption fails where processing is either not occasional or includes special category data. HR processing is both regular and includes special category data (sickness, occupational health, sometimes trade union membership). The exemption is not available in practice. Keep the ROPA whatever your size.

Cross-check the retention period in the schedule against Part 2

If you are retaining for longer than any plausible claim window allows, you need a documented reason. If you are retaining for less time than the claim window, you may be unable to defend a claim that arrives near the deadline.

Apply the cross-border routing

For each employee whose country of work is not the country of the employer, use the Part 2 column that matches the country of work. Hold defensive records to the longer of the two limitation periods that could touch the employment relationship.

Review the mapping at least annually

Time limits and lawful bases change as employment law evolves, particularly in NI where the Good Jobs Employment Rights Bill may bring substantial change once enacted, and in ROI where the Sick Leave Act 2022 step from 5 to 7 days remains paused at the time of writing.

Special category data: operational standard

Wherever Article 9 GDPR applies (occupational health, sickness, accident records, religion or political opinion via Article 55 monitoring, biometric data, trade union membership), the lawful basis under Article 6 is necessary but not sufficient. Three operational controls also apply.

Access. Restrict access to a named list of HR and occupational health staff. Line managers and IT should not see special category content by default. Document the access list in the privacy notice and the ROPA.

Storage. Hold special category records in a separate area of the HRIS or in a separately controlled folder. Do not co-locate with the general personnel file. Encryption at rest where the HRIS supports it.

Documentation. Name the Article 9 condition AND the national derogation in the ROPA: DPA 2018 Schedule 1 (UK) for NI processing; DPA 2018 Section 36 and Part 5 for ROI processing. A bare 'Article 9(2)(b)' citation will not stand inspection.

AI in HR: minimum vendor governance

Each AI tool that processes employee data engages four obligations on the employer as controller. Set the floor at procurement, not at deployment.

Data Processing Agreement. Article 28 GDPR-compliant DPA in place before the vendor receives personal data. Sub-processor list and consent mechanism named in the DPA.

DPIA trigger. A DPIA is mandatory under Article 35(3)(a) for systematic and extensive automated evaluation, and under Article 35(3)(b) for large-scale special category processing. DPA Section 35(4) list and ICO Article 35(4) list both cover HR cases: AI CV screening, employee monitoring, biometrics, sentiment analysis, location tracking.

Article 22 safeguards. Where a tool takes a solely automated decision producing legal or similarly significant effects on the employee (e.g. auto-rejection at CV stage, automated probation outcomes), the employee must have the right to obtain human intervention, express their view, and contest the decision. Build this into the workflow before go-live.

Training data. The DPA must prohibit the vendor using employer-provided employee data to train its general models without a separate, documented lawful basis. Consent is not appropriate in the employment relationship. Default position: no training, audit right reserved.

Legitimate Interests Assessment: which rows engage it

Wherever Article 6(1)(f) is named as the basis in Part 1, the controller must hold a written, three-part LIA on file before the processing starts. The rows in this annex that engage it are:

Job adverts and unsuccessful CVs; emergency contact details; performance reviews and 1:1 notes (where LI rather than contract); disciplinary and grievance records (where LI rather than contract); CCTV footage of staff; personnel file post-termination (where LI rather than legal obligation); references given to future employers; settlement and compromise agreements (where LI rather than contract).

The three-part test: purpose (is the interest real and clearly defined), necessity (is the processing actually needed to achieve it), balancing (does the interest outweigh the employee's rights and reasonable expectations). The DPC and the ICO both expect to see the LIA produced on inspection.

One source of truth: no shadow HR systems

Every record in this annex assumes a single authoritative location for the data. The HRIS, the payroll system, the leave system, the occupational health platform: each record category has a primary home and the retention rule attaches there.

Shadow systems break this. Manager spreadsheets of disciplinary notes. CV libraries in personal inboxes. Slack DMs about an absence pattern. Shared drives nobody owns. Each one duplicates the record and starts a separate retention clock the controller cannot enforce. Subject Access Requests pick them up. Breaches expose them.

Three operational rules. First: the HRIS is the source of truth for the personnel file, end-to-end. Second: ad-hoc storage outside the HRIS (manager notes, working documents) is in scope for SARs and retention, so it should be minimised and timeboxed. Third: any new system that holds employee data goes through the same DPIA, DPA and retention review as the primary HRIS. No 'just for now' tools.

Sources and disclaimer

ROI sources: General Data Protection Regulation (EU) 2016/679; Data Protection Act 2018; Statute of Limitations Act 1957; Statute of Limitations (Amendment) Act 1991; Defamation Act 2009; Workplace Relations Act 2015; Protected Disclosures Act 2014 as amended 2022; Sick Leave Act 2022; Automatic Enrolment Retirement Savings System Act 2024; plus the statutes referenced in the retention schedule.

NI sources: UK General Data Protection Regulation (as incorporated by the Data Protection Act 2018); Limitation (NI) Order 1989; Defamation Act (Northern Ireland) 2022; Employment Rights (NI) Order 1996; Fair Employment and Treatment (NI) Order 1998; Public Interest Disclosure (NI) Order 1998; Pensions (NI) Order 1995; plus the statutes referenced in the retention schedule. Many provisions of the Employment Rights Act 2025 apply differently, or may not apply, in Northern Ireland because employment law is devolved.

Employers should maintain a documented retention policy, a lawful basis register, and a claim defence map. Each should be reviewed at least annually against applicable employment, tax, immigration, health and safety, equality and litigation requirements.

This annex is guidance, not legal advice. The lawful basis grid is a starting point: each employer's specific processing should be assessed in context. For complex cases, and any cross-border employment, get legal sign-off. Legal Island and HRLocker do not accept liability for decisions taken solely on the basis of this document.