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Data Protection Act 1998

A SIMPLE GUIDE TO THE DATA PROTECTION ACT 1998

This is a basic guide prepared by the Technical Advisory service for members and their clients. It is an introduction only and should not be used as a definitive guide, since individual circumstances may vary. Specific advice should be obtained, where necessary.

DATA PROTECTION ACT 1998

The Data Protection Act 1998 "The Act" effects all organisations that handle personal data. The Act came into force 1 March 2000 and sets out rules for processing personal data, detailed within eight principles. The Act replaces the previous Data Protection Act 1984.

The Act is overseen and enforced by the Information Commissioner, who are additionally responsible for the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. A link to their website is detailed below:

<http://www.ico.gov.uk/>

Though the main emphasis of the Act is to provide rules for processing information it also provides rights to members of the public those data is being processed. One common misconception about the Act is that it is restricted to information contained on a computer, some information held on paper is also covered by this Act.

DEFINITIONS

It is important to understand the definitions of 'personal data', 'data controller' and 'data processor' as it will become clear further in this guide.

What is personal data:

"...data which relate to a living individual who can be identified

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual."

A definition of a data controller is:

"...a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed".

A definition of a data processor is:

"...any person (other than an employee of the data controller) who processes the data on behalf of the data controller."

PRINCIPLES & CONDITIONS

The Information Commissioners provide a framework of eight principles that must be complied with when processing personal information, summarised below:

- 1 Fairly and lawfully processed
- 2 Processed for limited purposes
- 3 Adequate relevant and not excessive
- 4 Accurate and up to date
- 5 Not kept for longer than is necessary
- 6 Processed in line with the rights of the data subjects
- 7 Secure
- 8 Not transferred to a country or territory outside the European Economic Area (EEA) without adequate protection

The underlying details to each of the eight principles can be found on the Information Commissioners website.

Conditions

In order to comply with the eight principles at least one of the following six conditions must be met to process information.

- 1 The data subject has given his consent to the processing.
- 2 The processing is necessary -
 - (a) for the performance of a contract to which the data subject is a party, or
 - (b) for the taking of steps at the request of the data subject with a view to entering into a contract.
- 3 The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
- 4 The processing is necessary in order to protect the vital interests of the data subject.
- 5 The processing is necessary –
 - (a) for the administration of justice,
 - (b) for the exercise of any functions conferred on any person by or under any enactment,
 - (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or
 - (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.
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 - (1) The processing is necessary for the purposes of legitimate interest pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
 - (2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.

These conditions can be found in Schedule 2 of the Act.

Additional Conditions

If and when the information being dealt with is of a sensitive nature, there are additional conditions that need to be complied with. These additional conditions can be found in Schedule 3 of the Act. There are seven definitions that fall within the classification of sensitive personal data, they are:

- Racial or ethnic origin
- Political opinions
- Religious beliefs
- Trade union membership
- Physical or mental health
- Sexual life
- Commission or alleged commission of any offence

SCOPE OF THE DATA PROTECTION ACT 1998

Accountancy firms

Why is this important to you as an Accountancy practice? Apart from in a very limited number of cases an Accountancy practice will be regarded as a data controller and hence subject to the Act.

Once it is established whether or not someone is a data controller, the data controller needs to comply with the Data Protection Principles.

It must be noted that if no personal data is processed then the Act does not apply.

Cost and registration

The cost of registering under the Act is £35 annually and as this is a statutory fee it is not subject to VAT. Registration has to be made to the Information Commissioners by either requesting a notification form or by completing the online notification, follow the link for both options.

http://www.ico.gov.uk/Home/what_we_cover/data_protection/notification.aspx

Penalties

Failure to register or unlawfully obtaining personal data could result in a maximum penalty of £5,000 at Magistrates' Court or an unlimited fine at the Crown Court. However, this may change in the future with the possibility of a custodial sentence for serious offences.

Guides

The Ministry of Justice also provide three guides to the Data Protection Act 1998 under the heading of "Data sharing and protection", they can be found by following the link below.

<http://www.justice.gov.uk/guidance/datasharing.htm>

Another helpful link is a tool available on the Business Link website, which operates an interactive tool that helps with the decision whether or not you are required to register under the Data Protection Act.

<http://www.businesslink.gov.uk/bdotg/action/layer?topicId=1074450564&r.li=1080307294&r.l1=1073858787&r.l3=1074452663&r.t=RESOURCES&r.i=1074461805&r.l2=1074435933&r.s=a>

Rights under the Data Protection Act 1998

Individuals have a right to be informed whether they are the subject of data being processed by a data controller. In addition, individuals have the right to request any information a data controller may hold about them, not including information relating to third parties. Any request for information must be made in writing with an option available to the data controller to charge £10 in dealing with the request.

Auditors are not exempt from the Act and must comply with any such request for information, though there are certain exemptions available to statutory auditors as apposed to non-statutory auditors.

Complying with the Data Protection Act 1998

It is always good practice to show your clients your compliance with the Act, this can be demonstrated in the letter of engagement, an example paragraph of which is detailed below:

"We confirm that we will comply with the provisions of the Data Protection Act 1998 when processing personal data about you and your family. In order to carry out the services of this engagement and for related purposes such as updating and enhancing our client records, analysis for management purposes and statutory returns, legal and regulatory compliance and crime prevention we may obtain, use and disclose personal data about you."

FURTHER CONSIDERATION

If there are any doubts about registration, the Information Commissioners have a contact number available to help with specific queries, 01625-524510. In addition, there is the option of voluntary registration available.

Though this guide is specifically focused towards members in practice, the broader application must be considered, in particular is the Data Protection Act appropriate to your clients?

The Data Protection Act 1998 can be found by following the link below.

http://www.opsi.gov.uk/Acts/Acts1998/ukpga_19980029_en_1

This is a guide for ACCA members to assist in understanding the Data Protection Act 1998 and to provide assistance when dealing with clients. This document has no regulatory status and provides an overview of the changes.