

Data Protection Act 1998

What is the Data Protection Act 1998?

The Data Protection Act (“the Act”) controls the handling by an individual, company or organisation of personal information belonging to individuals, known for the purposes of the Act as “data subjects”.

Who does the Data Protection Act apply to?

- ▶ Any individual, company or organisation that collects, stores or processes personal information belonging to individuals is known as a **“data controller”** and must:
 - **Notify the Information Commissioner** that it is a data controller. The Information Controller maintains a register containing details of the name and address of every data controller and the general purpose and manner in which personal data is processed by them. Notification must be renewed every year and currently costs £35. You can visit the website, www.informationcommissioner.gov.uk for further information.
 - Comply with the **8 principles of data protection**.
 - Observe the rights of the data subjects whose information they hold.

What is data?

- ▶ Any information:
 - processed by an automated system (i.e. a computer).
 - recorded as part of a relevant filing system (including a manual filing system).
 - which forms part of an accessible record.

What is personal data?

- ▶ Any data relating to an individual who can be identified by that data or from that data plus other information.

What is sensitive personal data?

- ▶ Personal data containing any of the following information:
 - Racial or ethnic origin.
 - Political origin.

- Religious or other beliefs.
 - Trade union membership.
 - Physical or mental health.
 - Sexual life.
 - Offences or alleged offences.
- Sensitive personal data must only be processed where the explicit consent (i.e. consent in writing) of the data subject has been obtained.

What are the principles of data protection?

- There are 8 principles laid down by the Act governing the storage and processing of personal data. **Anyone dealing with personal data should be familiar with these.** We can provide further details of these and advise you on the implications of the principles on your business.

What are the rights of data subjects?

- Data subjects have rights under the Act including the **right to find out what information the data subject holds** about them and the right to request that their data is not used for direct marketing.
- Data subjects may make a **complaint to the Information Commissioner** if they believe that the data controller is mishandling their data. An enforcement notice may be sent to the data controller to request compliance with the Act. Failure to do so may result in criminal proceedings being taken against the data controller.

I run a business, in what ways do I need to consider the provisions of the Act?

- If you do anything during the course of your business in which you obtain or process personal data of clients or customers then you must provide your clients or customers with notification of:
- The purposes for which you will use their data.
 - To whom their personal data will be disclosed.
 - Their right to request you to remove their details from your database on written request.
 - Their right to confirmation of the information held by you on written request (and a administration fee of £10).
 - Their right to opt out of receiving any direct marketing by post, fax or telephone.

- ▶ You must keep all records retaining personal data of your clients or customers confidential and secure and ensure that there is no unauthorised disclosure of it.
- ▶ You must destroy all personal data once you have used it for the specified purpose.
- ▶ Your business documents i.e. your standard terms and conditions of business and terms and conditions of website use should contain all information and notifications required by the Act.
- ▶ The Act also has far-reaching implications on the relationship between employers and employees and all employment contracts and records (such as absence and sickness records) must adhere to the provisions of the Act.

Why do I need a solicitor?

- ▶ To advise you of the implications of the Act on your business and ensure that your contractual documents are up to date and adhere to the Act.
- ▶ To carry out a health check on your employment policies and contracts and ensure that they are data protection compliant.

If you would like straightforward advice from a specialist solicitor about the Data Protection Act 1998, Burroughs Day is here to help.

Please contact **Martin Ryan** or **Hazel Phillips** on **0117 9290333** or e-mail
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Please note: The material contained in this fact sheet is provided for general and summary purposes only and does not constitute legal advice. Before acting on it, appropriate legal advice should be taken.

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