

The Data Protection Act 2002 (the DPA) seeks to balance the legitimate needs of a data controller to process personal information with a person's right to privacy. In seeking this balance the DPA sets out when and how a person's data should be processed to avoid causing damage or distress to that person (data subject) or any other person.

The Information Commissioner (Commissioner) is responsible for upholding the rights of individuals and for ensuring that data controllers comply with their DPA obligations.

What is data?

Data is defined as one of the following:

- Information processed or intended to be processed by means of equipment operating automatically in response to instructions given for that purpose
e.g. computer files & databases, CCTV, audio recordings, email
- Information recorded as part of a *Relevant Filing System* or with the intention that it should form part of a relevant filing system
e.g. structured paper records, such as employee files.
- information in an *Accessible Record*
i.e. certain health, housing and education records

When does the DPA apply?

The DPA only applies to *Personal Data*. This is *data* which must:

- relate to a living individual;
- affect that individual's privacy; **and**
- **either**, identify the individual from the information;
- **or**, identify the individual from the information when it is combined with other information that is in or is likely to come into the organisation's possession.

Who must comply with the DPA?

Any business or organisation, which determines the purpose and the manner in which personal data are, or are to be, processed, is known as a *Data Controller*. All businesses, organisations, Government Departments, Statutory Boards and Schools etc. are Data Controllers and are therefore obliged to comply with the DPA.

Personal data processed only for an individual's domestic purposes are exempt from the requirements of the DPA.

How does a data controller comply with the DPA?

The DPA requires data controllers to comply with the *Data Protection Principles*, process data in accordance with an *individual's rights* and *notify* the Commissioner of the purposes for processing personal data.

Data Protection Principles

Data controllers must comply with the eight data protection principles. These state that personal data must be:

1. Used fairly **and** lawfully;
2. Used for specific and lawful purposes, in a manner that is compatible with those purposes;
3. Adequate, relevant and not excessive;
4. Accurate and where necessary kept up to date;
5. Kept for no longer than necessary;
6. Used in accordance with the rights of individuals under the DPA;
7. Kept secure to avoid unauthorised or unlawful use and accidental loss, destruction, or damage;
8. Not transferred to another country unless that country has an adequate level of protection.

Individuals Rights

The sixth data protection principle states that data must be processed in accordance with the rights of individuals. These rights are:

- Right of access to personal information *known as a **SUBJECT ACCESS REQUEST***
- Right to prevent processing likely to cause damage or distress
- Right to prevent processing for the purposes of direct marketing
- Rights in relation to automated decision making
- Right to seek compensation for any damage or distress caused by the failure of a Data Controller to comply with the requirements of the DPA
- Right to take action to rectify, block, erase or destroy inaccurate data

In addition, an individual, who believes that he or she has been affected by the processing of personal data, has the right to make a **request for assessment** to the Commissioner to determine if processing has been carried out in compliance with the DPA.

Notification

Notification is the method by which a data controller informs the Commissioner of the purposes for processing personal data. These details are held on a public register maintained by the Commissioner. It is an offence to process personal data without an entry in the register of data controllers. Whilst there is an initial notification fee and an annual renewal fee, certain organisations, such as registered charities, if required to notify, are exempt from fees.

There are some exemptions from the requirement to notify. However, even if a data controller is exempt from the requirement to notify, the remaining provisions of the DPA must still be complied with.

Further information on all aspects is available on the website.