

All data controllers are required to comply with the provisions of the Data Protection Act 2002 (the DPA). In common with other regulatory legislation it continues to apply despite insolvency and contains no special provisions, or exemptions, for insolvency practitioners or for insolvent companies or individuals.

This guidance note aims to help insolvency practitioners understand how the main provisions of the DPA apply in an insolvency situation, but is for general guidance only. Practitioners may find it helpful to consider it in conjunction with other guidance and advice published by the Information Commissioner and should take legal advice as necessary.

Many points in this guidance note have been addressed by the English courts. This includes the requirement for both the insolvent company and the practitioner to have an entry in the register of data controllers and that the right of access to personal data continues to apply, and must be dealt with, even during insolvency. "Southern Pacific Personal Loans Limited" is the main relevant case at the time of writing, and a copy of that judgment is available on the Legislation page of the website.

Entry in the register of data controllers

All data controllers are required to notify the Information Commissioner of the processing of personal data that is undertaken, and an entry will be made in the register of data controllers. It is an offence to process personal data without an entry in the register of data controllers, unless an exemption from that requirement applies.

A distinction can be drawn between personal data which is generated as a result of the practitioner's responsibilities and personal data which is attributable to the activities of the insolvent company for which he acts. In the majority of cases, both the practitioner and the insolvent company will be required to have an entry in the register of data controllers.

As long as a company remains in existence without being dissolved and continues to process (including holding) personal data, it remains a data controller and the duty to maintain a register entry continues to apply.

The practitioner must not be subject to interference and is required to keep records of his appointments. This will require keeping records relating to the directors of the companies in respect of which he is appointed. This information is likely to be held as data and will be personal data. Other information he has a duty to deal with, for example, lists of debtors, creditors and the dividend distribution to the creditors will also be kept by the practitioner and are not the same as the records of the insolvent company.

The practitioner is, therefore, a "data controller" for personal data processed as a result of his personal responsibilities as a practitioner and a register entry must be made, and maintained, in the practitioner's own name, which covers any processing of personal data his actions or decisions cause to happen. If the practitioner is employed by a firm which provides administrative services etc. to him, the firm, as it is acting on the practitioner's instructions, will be a data processor.

Further guidance on notification and the registration process is available on the website.

Compliance with the Data Protection Principles

The company must comply with the DPA and all the data protection principles, irrespective of whether it requires to have an entry in the register of data controllers or not.

The practitioner must comply with the DPA and all the data protection principles when processing personal data and when entering arrangements which affect the control of personal data, for example the sale of part of a company, its assets, or hiving off arrangements.

For example, if personal data is sold or transferred to another data controller, he must ensure compliance with the fair processing requirements of the First Data Protection Principle and advise individuals of that new arrangement.

Practitioners should also be mindful of the security considerations when selling, or disposing of, electronic equipment and make sure all personal data has been effectively erased. Further guidance on the disposal of electronic equipment is available on the website in the section on the seventh data protection principle.

Further guidance on all the data protection principles is available on the website.

Compliance with the rights of individuals

Individuals have many rights under the DPA; one of the most commonly exercised is the right of access to personal data. This right can be exercised at any time.

In insolvency, "subject access requests" can be made to

- (i) the insolvent company, and/or
- (ii) the practitioner.

The practitioner should take care to ascertain whether the subject access request is being made in respect of personal data held by the practitioner or by the company.

Comprehensive guidance on complying with subject access requests, and other rights exercised by individuals, is available on the website.