Data Protection Act
Cloud Computing

information commissioner
Barrantagh Fysseree

Cloud computing is a general term for anything that involves delivering hosted services over the Internet.

The cloud service provider will usually be acting as a 'data processor' for a 'data controller'. Further guidance on the concept of 'data controllers' and 'data processors' is available on the website.

The data controller remains legally responsible for how the personal data is processed by the data processor and this must be detailed in a contract to ensure that the processing complies with the provisions of the Data Protection Act 2002.

The contract must provide that the cloud provider only processes data in accordance with the data controller's instructions and has appropriate measures in place to keep the data secure. This is of particular relevance to ensuring compliance with the seventh data protection principle - the security of personal data. The data controller is also responsible for taking "reasonable steps" to ensure compliance by the cloud provider.

It is important that the data controller establishes precisely where the data provided to a cloud provider will be processed.

If the cloud provider is storing the data inside the European Economic Area (EEA), the jurisdiction will be deemed to have adequate data protection laws in place and no further steps will be required. This is also true of jurisdictions, outside the EEA, that have received an adequacy finding in respect of their data protection laws. An example of clauses for contracts, or memoranda of agreement, between data controllers and data processors in the EEA, or other adequate jurisdictions, is available on our website.

However, if the cloud provider is storing your data outside the EEA, you must take additional steps to ensure that the data remains protected, and the transfer of personal data also complies with the eighth data protection principle. Our guidance on the eighth data protection principle and international transfers will provide you with further detail on this aspect. The European Council's approved standard contractual clauses for transfers to data processors in third countries should be used in these circumstances.

These standard contractual clauses should relate only to data protection and cannot be amended. However, the data controller and data processor are free to include any other clauses on business related issues that they consider as being pertinent for the contract as long as they do not contradict the standard contractual clauses.

Irrespective of where your data is being stored, you must ensure that, to comply with your fair processing obligations, individuals are informed of where their personal data is being processed and that your register entry, if required, reflects the location to which transfers of personal data are made.

Other Sources of Advice and Guidance

The Article 29 Working Party, set up under the Directive 95/46/EC, issued Opinion 05/2012 on Cloud Computing on 1st July 2012. This Opinion can be found the Working Party's website.

The European Parliament's Citizens' Rights and Constitutional Affairs Committee published a study into "Fighting cyber crime and protecting privacy in the cloud" in October 2012

The European Data Protection Supervisor issued a press release "responsibility in the Cloud should not be up in the air" and an Opinion "on the Commission's Communication on "Unleashing the potential of Cloud Computing in Europe"" in November 2012.

Data protection regulators in other jurisdictions have also published advice and guidance on their websites.

These include the United Kingdom's Information Commissioner's "Guidance on the use of cloud computing" and the Irish Data Protection Commissioner's "Data Protection "in the cloud"".

Further information is also available from the cloud industry itself, for example, the Cloud Industry Forum.