



## **GUIDANCE NOTE ON THE DATA PROTECTION ACT 1998**

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This guidance note gives an overview of how the Data Protection Act 1998 (the "Act") applies to clubs (including class associations) and recognised training centres. It suggests a series of steps to be taken by clubs and centres to ensure compliance.

### **Key Elements**

The Data Protection Act 1998:

- Regulates the way data controllers process personal data
- Provides stronger protection for sensitive information
- Requires certain organisations to notify the Information Commissioner about their processing of personal data
- Gives individuals to whom the data relates various rights (including: right of access, ability to prevent direct marketing)
- Establishes an enforcement regime

Certain expressions are given special meanings by the Act.

### **Data controllers**

A data controller is the person who determines the purposes for which, and the manner in which, any personal data is/are, or is/are likely to be processed.

### **Personal data**

Personal data means data which relates to a living individual who can be identified from that data.

### **Processing**

The Act applies when personal data is processed by a computer or is recorded in a structured manual filing system. The term

“processing” covers virtually any use which can be made of personal data e.g. collecting, storing, using and destroying it.

### **Sensitive personal data**

Sensitive personal data consists of information relating to the racial or ethnic origin of a data subject, his political opinions, religious beliefs, trade union membership, sexual life, physical or mental health condition or criminal offences or record. Where clubs and centres collect sensitive personal data (as will often be the case) , e.g. special dietary needs, health declarations on booking forms etc additional criteria need to be fulfilled in order to ensure compliance. The most straightforward means to ensure compliance with these additional criteria is to include a **consent statement** within the data protection notice on the relevant collection form (see example data protection and consent notice below).

### **The eight data protection principles**

In order to comply with the Act, a data controller must comply with the eight data protection principles which makes sure that the personal information is:

- Fairly and lawfully processed
- Obtained only for specified and lawful purposes
- Adequate, relevant and not excessive
- Accurate and kept up to date
- Not kept longer than necessary
- Processed in line with the rights of data subjects under the Act
- Secure
- Not transferred to other countries without adequate protection

### **Information Commissioner**

The Information Commissioner’s Office (“ICO”) is an independent authority set up to promote access to official information and to

protect individual's personal information. The Commissioner has enforcement responsibilities for the Data Protection Act 1998 and related regulations such as the Privacy and Electronic Communications Regulations and the Freedom of Information Act.

The ICO website is very helpful and includes detailed guidance notes on many aspects of the Act.

Useful links:

<http://opsi.gov.uk/acts/acts1998>

<http://ico.gov.uk>

[http://www.direct.gov.uk/en/RightsAndResponsibilities/DG\\_10028507](http://www.direct.gov.uk/en/RightsAndResponsibilities/DG_10028507)

**Most clubs and centres will be processing personal information relating to their members, customers, employees, suppliers, race entrants etc and will therefore need to comply with the Act.**

### **5 Practical Steps towards compliance**

The RYA recommends that clubs and centres undertake the following steps:

- ALLOCATE responsibility within your club/centre
- Decide whether your club/centre needs to NOTIFY the Commissioner
- AUDIT forms, IT systems and website, processes
- TRAIN officers, staff and volunteers
- THINK DPA for all new club/centre initiatives

## **STEP ONE – Allocate Responsibility**

Compliance responsibilities will naturally fall to those officers, staff and volunteers of clubs and centres who come into contact with personal data such as: the club secretary; membership secretary; webmaster; bookings officer and, the events secretary. It is suggested that larger clubs and centres appoint a data protection officer.

## **STEP TWO - Notification**

The default position is that every organisation that processes personal data must notify the ICO. Failure to notify is a criminal offence.

Notification can be made on line via the ICO website ([http://www.ico.gov.uk/Home/what we cover/data protection/notification.aspx](http://www.ico.gov.uk/Home/what_we_cover/data_protection/notification.aspx)).

The cost of notification is £35 on registration and £35 annually thereafter.

Exemptions from the requirement to notify are possible for the following.

- Data controllers who only process personal information for:
  - staff administration (including payroll);
  - advertising, marketing and public relations (in connection with their own business activity); and
  - accounts and records.

- Some not-for-profit organisations (see below)
- Processing personal information for personal, family or household affairs (including recreational purposes).
- Maintenance of a public register.
- Processing personal information without an automated system such as a computer

### **Not-for-profit organisations**

There is a specific exemption from notification for data controllers that are a body or association not established or conducted for profit, provided that their processing does not fall outside the descriptions below:

- The processing is only for the purposes of establishing or maintaining membership or support for a body or association not established or conducted for profit, or providing or administering activities for individuals who are either members of the body or association or have regular contact with it.
- The data subjects are restricted to the processing of those for whom personal information is necessary for this exempt purpose.
- The data classes are restricted to personal information that is necessary for this exempt purpose.
- The disclosures other than those made with the consent of the data subject are restricted to those third parties that are necessary for this exempt purpose.
- The personal information is not kept after the relationship between the not for profit organisation and the data subject ends, unless (and for so long as) it is necessary to do so for the exempt purpose.

There is a trap for the unwary! Even if a club can potentially take advantage of one of the exemptions to notification the club WILL need to notify the ICO if personal data is being processed for “non exempt purposes”. These include: processing for crime prevention such as operating a CCTV camera, processing data obtained via a credit reference agency and advertising , marketing and public relations for others e.g. a club or centre intends to allow its member or candidate details to be used by another organisation for marketing purposes.

The ICO have issued a Self Assessment Guide which includes a series of simple questions to work through to determine whether an organisation needs to notify the Commissioner. This guide is available online on their website. They also operate a Notification helpline 01625 54574

*Note: the requirement to notify the ICO of the processing of personal information is independent of the requirement to comply with other aspects of the Act. Even if a club or centre is exempt from notification they will still need to comply with the Act.*

### **STEP THREE – Audit & Review forms and website**

- Identify collection processes  
(e.g. Membership application forms, course booking forms, regatta/open meeting entry forms, staff contracts, website, CCTV)
- Add a Data Protection Notice to all forms in which personal data is collected and include a Consent statement if the data is sensitive personal data
- Formulate a Privacy Policy for staff, volunteers and website
- Review methods used to maintain accuracy of the personal data held and to delete data no longer needed

The following are example Data Protection Notices that can be used. The first is for a membership application form and does not include a consent statement. The second and third assume that sensitive personal data will be collected (e.g. health declarations or photographs) and therefore include consent statements.

The example notices will need to be customised to the processing that a club or centre intends to undertake in relation to the personal data collected in the form. If the club or centre intends to share the personal data with other organisations or between members (e.g. by way of a membership handbook with members contact details) this MUST be stated in the data protection notice and the data subject given the opportunity to object.

#### **....for membership application...**

*The information which you provide in this form and any other information obtained or provided during the course of your application for membership will be used solely for the purpose of processing your application (including payment processing) and if elected to membership, dealing with you as a member of [insert name of club][ including creation of a membership handbook with member's contact details which will be available to all members]. The data will not be shared with any third party for marketing or commercial purposes without firstly obtaining your explicit consent. [If you object to the inclusion of your details in a membership handbook please tick here\_\_\_\_\_]*

NOTE: a similar consent notice will need to be included on membership renewal forms

#### **....for a course booking form...**



**Data Protection Act 1998.** *The above information including the questions as to your health and ability will be used by us to process your booking for the course (including payment processing) and for attending to your safety whilst you are on one of our courses. Names and addresses of candidates for RYA courses may also be shared with the RYA. If you object please tick here \_\_\_\_\_*

*We shall also include your name and address on our mailing list. If you do not want to receive details of future courses and events please tick here \_\_\_\_.*

**....for an open meeting...**



**Data Protection Act 1998.** *The above information will be used by [insert name of race organiser] to process your race entry (including payment processing) and to deal with you as a competitor. Occasionally we take photos of competitors for publicity purposes, including for use on our own website and/or the websites of the race sponsors [insert names of sponsors]. If you object please tick here \_\_\_\_.*

*We shall also include your name and address on our mailing list. If you do not want to receive details of future similar events please tick here \_\_\_\_.*

#### **STEP FOUR - Train Officers, Staff and Volunteers**

All officers, staff and volunteers who come into contact with personal data need to know how to handle it. The key points are as follows:

- Keep it accurate and up to date
- Delete/destroy when no longer needed
- Protect from unauthorised disclosure or access
- Don't collect more than needed!
- Officers, staff and volunteers need to be able to recognise and deal with a subject access request



A subject access request is any request from an individual using their right under the Data Protection Act. A club or centre must decide, taking any exemptions into consideration what information needs to be given. The club has 40 calendar days to respond to the request and may charge the subject a fee up to £10. The ICO have published guidance notes on how to deal with subject access requests and the type of data which would not have to be revealed.

### **STEP FIVE – Think DPA for all new for all new club or centre initiatives**

If the ***type of activities undertaken*** by a members club changes e.g. a significant portion of the club revenue is generated from branded merchandise which is sold for profit, or the club regularly acts as a venue for sailing events for non club members this may change the balance of whether or not the club needs to notify the ICO.

If the **manner in which personal data collected is to be used** changes e.g. a club or centre intends to obtain commercial sponsorship for an event in exchange for giving access to membership names and addresses to the sponsor this may not be permitted under the terms of the data protection notice used on the event entry form.

### **RECAP!**

- The DPA **does** apply to clubs and centres
- **Notify** your processing to the ICO unless confident that you are exempt from notification
- **Audit** paperwork , IT systems and website, don't ask for any data you don't **need** and add **data protection and consent notices** (where necessary) to your forms, possibly a **create a privacy policy for your website** and review processes for updating and deleting data

- **Train** staff and volunteers how to handle the data to prevent inadvertent disclosure and how to deal with subject access requests!
- **THINK DPA** for all new initiatives.

And finally, a word on penalties....

## **Penalties**

The ICO have the power to impose significant civil financial penalties for breaches of the eight data protection principles which are:

- serious;
- of a kind likely to cause substantial damage or substantial distress; and
- deliberate, or the fault of a data controller who knew or ought to have known about the risk of a breach, but failed to take reasonable steps to prevent it.

The ICO must first issue a "notice of intent" giving the data controller an opportunity to make representations within a time limit. Data controllers can appeal against the award of a monetary penalty to the Tribunals Service (formerly the Information Tribunal).

Guidance is available from the ICO website on monetary penalties, setting out in detail its interpretation of the law and the procedure it will follow.

Further related subjects....

## **CRIMINALS RECORDS DATA**

In terms of processing data relating to criminal records, the best guide is provided by the Home Office Code of Practice for Registered Bodies working with the Criminal Records Bureau (CRB). Under the

Code, criminal records data can be held by organisations receiving the information from that umbrella body, providing they comply with the code.

Under the Code, all data relating to criminal records must be stored in a locked cabinet, and can be held for a period of six months. After that time the information must be destroyed. Organisations will thereafter only be allowed to keep a record of an individual's name, the position applied for, the application reference number with the CRB, and the recruitment decision taken.

## **DISCIPLINARY CASES**

Data relating to disciplinary procedures would be classed as sensitive under the Act, and hence there are strict conditions under which such data may be held. While clubs should consider each individual case, the Act does permit the retention of sensitive data which relates to "legal proceedings", and in cases where the public is being protected against instances of dishonesty and malpractice.

For more information kindly contact the RYA Legal Team on 0844 5569519 or [legal@rya.org.uk](mailto:legal@rya.org.uk)

### **Disclaimer:**

**The RYA Legal Team provides generic legal advice for its members, affiliated clubs and RTCs. This leaflet represents the RYA's interpretation of the law. It takes all reasonable care to ensure that the information contained in this leaflet is accurate. The RYA cannot accept responsibility for any errors or omissions contained in this leaflet, or for any loss caused or sustained by any person relying on it. Before taking any specific action based on the advice in this leaflet, members are advised to check the up to date position and take appropriate professional advice.**

JH [Leaflets/Red Tape/Data Protection Act]