



Basic Principles - Data Protection Act 1998

The particular points to note in the 1998 Data Protection Act are:

- a broad definition of 'data', including information held both electronically (whether on computer or other electronic means) and in manual or paper-based filing systems regardless of location
- a broad definition of 'processing'
- extension of the rights of 'data subjects' (workers in this case) to have access to details of data held about them, to know for what purpose information is held, and its relevance to their working life.

There are eight principles governing the processing of personal data:

- personal data shall be processed fairly and lawfully
- personal data shall be obtained only for specified and lawful purposes, and shall not be processed in any manner incompatible with those purposes
- personal data shall be adequate, relevant and not excessive in relation to the purposes for which it is processed
- personal data shall be accurate and, where necessary, kept up to date
- personal data shall be kept for no longer than is necessary for the purposes for which it is processed
- personal data shall be processed in accordance with the rights of data subjects under the Act
- personal data shall be subject to appropriate technical and organisational measures to protect against unauthorised or unlawful processing and accidental loss, destruction or damage
- personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of data protection.

The 1998 Act introduces new restrictions on the holding and processing of what is termed 'sensitive personal data', such as racial or ethnic origin, political opinions, religious or other beliefs, whether a member of a trade union, physical or mental health, sexual life, and any court record, or allegations of such. In addition to being subject to the eight principles above at least one of the following conditions must be complied with - there are others, but most relevant in the context of employment are:

- the worker has given his or her explicit consent to the processing
- the processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the employer in connection with employment
- the processing is necessary in connection with any legal proceedings or for the purpose of obtaining legal advice
- the processing is necessary for the administration of justice, for the exercise of functions conferred by statute, or for the exercise of any function of the Crown

The Act also covers the use of computerised decision making packages, such as those used in recruitment and sifting of applications. The uses of such packages to complement, not replace, human judgement is not in contravention of the Act - it is when they are in sole use that restrictions apply.

Employers should think carefully about what kind of information they ask of their workers. What is the purpose of such information? Who is to have access to it and under what conditions? Unauthorised access to workers' records should be a disciplinary matter, and may be a criminal offence under Section 55 of the Act. Remember that the worker can access their personal records and demand rectification of errors, and can claim compensation for damage caused by any breach of the Act, and also for distress in certain circumstances. Someone in the organisation must take responsibility for compliance with the Act.

Since October 2001 individuals have been able to see all manual files held on them, and been able to make complaints, seek correction or claim recompense.

Enforcement is the responsibility of the Information Commissioner.

Full details are available from the Office of the Information Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF, Information line 01625 545700.

The Commissioner published a Code of Practice on the Use of Personal Data in Employer/Employee Relationships in early 2001. This Code gives detailed advice for employers and further recommendations for good practice.

The website, www.informationcommissioner.gov.uk gives details of the publication of the Code and subsequent Codes of Practice on recruitment and selection, employment records, monitoring at work and medical information.