



Introduction

The UK Data Protection Act 1998, ('the Act') provides the foundation for data protection law in the UK and applies to all companies that process personal information. This briefing focuses on the main points of the Act and the practical considerations, particularly concerning: i) the exemption from notification and ii) requests to access the shareholder register.

The Act places obligations on organisations that use personal information and gives individuals rights concerning their personal data. The Act applies to 'data controllers' (those who determine how and why 'personal data' is, or will be, processed) and states that those who record and use personal information must be open about how the information is used and must follow the eight 'data protection principles' of "good information handling".

Definitions

'Personal data' means data which relates to a living individual who can be identified either (a) from those data, or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

'Data Controller' means a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed.

The eight 'Data Protection Principles':

1. Personal data shall be processed fairly and lawfully.
2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
4. Personal data shall be accurate and, where necessary, kept up to date.
5. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
6. Personal data shall be processed in accordance with the rights of data subjects under this Act.

Data Protection

7. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
8. 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 protection for the rights and freedoms of data subjects in relation to the processing of personal data.

Territorial Scope

The Act relates to a particular activity, processing personal data, rather than to particular people or organisations.

Therefore, if a company collects or holds information about an identifiable living individual, or if it uses, discloses, retains or destroys that information, it is likely to be processing personal data. The scope of the Act is therefore very wide as it applies to almost everything an organisation might do with individuals' personal details. Note that no territorial scope is defined and so the Act will still apply to international companies with even a basic presence in the UK.

Notification Under the Data Protection Act 1998

Under the Act, every organisation (data controller) that processes personal data must notify the Information Commissioner's Office ('ICO'), unless they are exempt. Failure to notify is a criminal offence.

Data controllers are required to inform the Information Commissioner of certain details about their processing of personal information. The Commissioner uses these details to make an entry describing the processing in the register, which is available to the public at: www.ico.gov.uk.

The main purpose of notification and the public register is to promote openness in the use of personal information.

Notification Exemptions

Most organisations that process personal data must notify the ICO of certain details about that processing. However, the Act provides exemptions from notification for:

- organisations that process personal data only 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;
- processing personal information for personal, family or household affairs (including recreational purposes);
- organisations that process personal data only for maintaining a public register; and
- organisations that do not process personal information on computers.

Data Protection

Data Controllers who are exempt from notification must still comply with the rest of the Act and indeed may choose to notify on a voluntary basis.

Data Protection Act 1998 and The Companies Act 2006

The various provisions regarding access to the statutory registers within the Companies Act 2006 ('the Companies Act') means that there is the potential to release personal data to third parties. In many cases, the Companies Act includes protective clauses that limit the scope of information released, protect personal data or at least define a threshold for access. However, this does not absolve a company from its obligations under the Act and the liability arising from a successful claim for damages by an individual under section 13 of the Act is still present.

With regard to public access to the share register, sections 116-119 of the Companies Act apply. A company must respond to requests to access the share register within five working days. It is an offence to refuse inspection or provide a copy of the register without an order of the court. However, the Companies Act includes a 'proper purpose' test, which allows the company to ensure that any requests for copies of the share register are made for valid reasons. Guidance issued by the Institute of Chartered Secretaries in the UK, is generally accepted as providing the reference point for what is and is not a 'proper purpose'.

Companies should note that whilst the registrar will manage access to the share register to ensure access is for 'proper purpose', a situation may arise where an application for access to the share register does not pass the proper purpose test. Should such a situation arise, companies will need to rely on their lawyers to apply to the court where necessary and within the five day deadline imposed by the Companies Act.

Shareholder register information is 'personal data' and the 'proper purpose' test does not absolve a company from its obligations under the Act, including the liability arising from a successful claim for damages by an individual under section 13.

Prism perspective

The scope of the notification exemptions suggests that the main focus of the Act is on companies where the processing of personal data is an integral part of the business model (e.g. mail order or market research companies). Many companies will therefore only be processing personal data for purposes that qualify for an exemption to notify the ICO.

Despite the exemption, companies are still obliged to follow the data protection principles. Companies should therefore be aware of the need to review data management and data security protocols as appropriate.

Companies should check that their registrar incorporates the ICSA guidance into its processes for dealing with requests for access to the share register and should also satisfy themselves that their lawyers have a process in place to deal with a failure of the 'proper purpose' test. Companies should also note that the proper purpose test does not replace the duties under the Act when it comes to handling personal data in the form of shareholder records.

Data Protection

Useful Sources:

Data Protection Act 1998:

www.legislation.gov.uk/ukpga/1998/29/contents

Information Commissioner's Office:

www.ico.gov.uk/

Prism Briefing; 'Access to the Register of Members':

www.prismcosec.com/contents/view/44

ICSA Guidance on Access to the Register of Members: Proper Purpose Test 2009:

www.icsa.org.uk/resources/guidance

Prism Cosec

November 2011

About Us

Prism Cosec is a company secretarial and corporate governance practice. We are a team of highly experienced company secretarial professionals with a strong reputation for competency and an ethos for pro-activity.

Our principle emphases are in supporting companies with quoted securities whether on the Main Market or AIM, but we will also support private companies where complex company secretarial services are required. We have international experience and a strong record in working with companies from emerging markets.

For further information please contact:

Chris Stamp

+44(0)203 008 6446

chris@prismcosec.co.uk

Prism Cosec is a trading name of Prism Communications & Management Limited and is a company registered in England & Wales. Registered number: 4352585 Registered Office: 10 Margaret Street, London, United Kingdom, W1W 8RL