

Data Protection



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1. BACKGROUND INFORMATION

The law governing Data Protection is covered by the Data Protection Act 1998. It implements the EC Data Protection Directive (95/46/EC) in the UK. The Act came into force on 1st March 2000 and replaces the Data Protection Act 1984.

The impact on Scouting activities is covered in Section 2 of this factsheet but it is important that readers first have an overview of the provisions of the 1998 Act.

Purpose of the 1998 Act

The purpose of the Act is to protect the right to privacy of individuals. In order to do this, the Act regulates the processing of Personal Data in relation to individuals, including the obtaining, holding, use or disclosure of such information. Young people have the same rights as adults under the Act

Changes to the 1984 Act

For those with knowledge of the 1984 Act the main changes made by the 1998 Act are as follows:

New set of data protection principles including new obligations in respect of security of data;
Restriction imposed on transferring data outside the European Economic Area (EEA);
Extension of the law to cover manual records;
Requirement to obtain specific consent for processing sensitive data;
The Data Subject's enhanced right to obtain information and object to processing;
New notification (registration) and enforcement procedures.

Definitions

- **'Data'** means information, which is held on a computer; or recorded in a manual filing system whereby specific information about a particular data Subject is readily accessible.
- **'Personal Data'** is information relating to a living Data Subject who can be identified from the data and any other information relating to the Data Subject that is likely to come within the possession of the Data

Controller. It includes expressions of opinion by or about the Data Subject.

- **'Data Subject'** is the individual who is the subject of the Personal Data held.
- **'Data Controller'** is the person who either alone or jointly with others determines the purpose and manner for which the Personal Data is to be used.
- **'Data Processor'** is the person who processes the data on behalf of the Data Controller.
- **'European Economic Area (EEA)'** The EEA comprises all 15 countries of the European Union (Austria, Belgium, Denmark, Eire, Finland, France, Germany, Greece, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom) and Iceland, Liechtenstein and Norway.
- **'Sensitive Personal Data'**. See below

Thus, anyone (or organisation) who wishes to record and process information about individuals (Data Subjects) from which they can be identified is subject to the provisions of the 1998 Act. However, the Act does not include persons collecting information on individuals for their own domestic or household affairs.

Data Protection Principles

Data Controllers must comply with all of the following principles, regardless of whether or not they are required to notify (register with) the Data Protection Commissioner under the Act. In general, the principles provide that the Personal Data must be: -

1. processed fairly and lawfully;
2. obtained for specified and lawful purposes only;
3. adequate, relevant and not excessive in relation to those purposes;
4. accurate and up-to-date;
5. kept for no longer than is necessary;
6. processed in accordance with the rights of Data Subjects;
7. kept secure against unauthorised or unlawful processing and accidental loss, destruction or damage;

8. restricted to the EEA unless the Personal Data is to be transferred to a country outside the EEA which can ensure an adequate level of protection.

'Sensitive Personal Data'

This is defined widely to include the following information about an individual: -

- health or sexual life
- religious or similar beliefs
- racial or ethnic origin
- criminal offences (actual or alleged) or proceedings relating to such offences.
- political opinions or trade union membership

The list of what constitutes Sensitive Personal Data can be added to by the Government.

Names, dates of birth, addresses, and telephone numbers are not classed as Sensitive Personal Data.

The Data Subject must give explicit consent to the holding of Sensitive Personal Data.

However, explicit consent is not required where the information has been made public by the Data Subject or for certain purposes including: -

- medical purposes
- legal proceedings
- monitoring racial equality
- the Data Subject's employment

Operation of the 1998 Act

To oversee the implementation of the Act the Government appoints a Data Protection Commissioner. Her duties include:

- the management of the register of Data Controllers and making this publicly available
- promoting the observance of the Data Protection Principles
- encouraging the development of codes and practices to assist Data Controllers in complying with the principles.

Penalties

The 1998 Act creates a number of criminal offences punishable by fine for failure to comply with any notices (instructions) issued by the Data Protection Commissioner to Data Controllers.

Notification (Registration)

The 1998 Act introduces a new system of notification which replaces the registration system under the 1984 Act. Notification is an annual process. A fee is payable on the initial notification and on each renewal. This is currently £35 (June 2000)

Notification is necessary unless the Data Controller can show that the data processing being undertaken falls within an exemption. See Section 2 Exemption from Notification.

Rights of Data Subjects

Data Subjects have the following rights. See also Section 2 Data Subject's Request.

- Access** - Data Subjects are entitled - with some exceptions - on request in writing and on payment of a fee set at a maximum of £10 (payable to the Data Controller) to be informed by the Data Controller about whether data is being processed about them. If data is being processed they are entitled to receive a description and a copy of the Personal Data held, the purposes for which it is being processed and those to whom the data has or may be disclosed. The Data Controller must comply with the request within 40 days.
- To require the Data Controller not to process data** - Data Subjects may require the Data Controller at the end of a reasonable period of time, to cease or not to begin processing any Personal Data on certain grounds. These are that the processing would cause unwarranted substantial damage or substantial distress to them or to another. However, this right is not available to the Data Subject where: i) the individual has already consented - unless that consent is revoked - or ii) the processing of data is necessary to perform a contract to which the individual is a party, e.g. in an employment situation; or iii) to comply with a legal obligation or iv) to protect the vital interests of the individual.
- To require the correction or erasure of inaccurate data about them.**
- To prevent processing of their data for the purposes of direct marketing**
- To receive compensation where an individual suffers damage by any contravention of the Act.**

- vi) **To make a request to the Commissioner to assess whether the Act has been contravened.**

2. SCOUTING AND DATA PROTECTION

Scout Units

Here the term 'Scout unit' refers to any Group, District, County or other body recognised by The Scout Association.

For the purposes of the Act, the Data Controller is the Executive Committee of the relevant Scout unit.

The Scout Association (Headquarters)

Headquarters is registered as a Data Controller under the 1984 Act and will be required to notify under the 1998 Act when notification is due. This registration permits it to keep Personal Data on a computerised database operated only by Headquarters.

This registration does not cover Scout units. Each Scout unit will need to notify (register) or come within an exemption if it wishes to keep Personal Data. Most Scout units will be exempt.

Exemption from Notification

Under the 1998 Act, Scout units which hold computerised or manual records of members of the Scout Movement or of other individuals who have regular contact with them, should not have to notify as they are classed as 'not for profit organisations' which are exempt from notification.

In this context those having regular contact will also include members of the Council of the relevant Scout unit.

In order for this exemption from notification to apply, the Personal Data can be processed only for the purposes of i) establishing or maintaining membership or support for the Scout unit; or ii) for providing Scouting activities to members or to those who have regular contact with the Scout unit.

However the Scout unit must still ensure that the individual (Data Subject) does not object to the Personal Data being held. Therefore the Data Subject should be told what information will be held and that it will only be used for Scouting purposes. They should also be told that the data

will not be disclosed to anyone outside the Scout Movement in the UK without their permission.

If the member is a minor, i.e. under the age of 18 years, the parent/guardian must be informed. A pro forma letter, which can be used for this purpose, is attached at Appendix 1.

Most adults – by completion of an application form such as *Form AA Adult Appointment Application* form – have already consented for their Personal Data to be held and used for Scouting purposes. For other adults a suitably modified version of the letter at Appendix 1 can be used.

The Personal Data must not be kept after the relationship between the Scout unit and the Data Subject ends unless and for so long as it is necessary to do so for the administration of the Scout unit and provision of Scouting activities.

It is in order to keep details of former members of the Scout Movement for the purposes of a continuing contact with them unless they require that Scout unit does not do so - See Section 1. Rights of Data Subjects

Sensitive Personal Data

If the information held on a member contains Sensitive Personal Data, e.g. relating to the member's health, the explicit consent (e.g. by signing a form) of the member must be obtained. If the member is a minor the explicit consent of the parent/guardian is required. The purpose for holding such information should be given, e.g. in order to deal with medical emergencies whilst on Scouting activities.

There are a few circumstances when consent to the processing of sensitive Personal Data is not required – see the section on Sensitive Personal Data in Section 1. Nonetheless, it is always advisable to obtain explicit consent and to ensure that the purposes for which the data is processed relate to the maintenance of membership or Scouting activities in order to remain within the not for profit exemption from notification.

Staff Administration

Some Scout units employ staff. Notification is not necessary if the processing is for the purposes of the appointment, removal, payment, discipline, superannuation, work management or

other personnel matters relating to staff. Data about the Data Subject can be given - without consent - to any third parties necessary for staff administration, e.g. Inland Revenue.

Data Subject's Request

If a Scout unit receives a request – in writing - from a Data Subject for a description and copy of the information which is held about him or her the secretary of the Scout unit (or other person appointed by the Executive Committee to act as the Data Processor) will have to comply with the request within the 40 day time limit.

If in disclosing such information, there is a risk that another individual will be identified the secretary (or other person appointed) can refuse to comply with the request - unless the other individual has given their consent or it is reasonable to comply with the request without that person's consent. This will have to be considered on a case by case basis

However, this cannot be used as an excuse not to disclose information on the Data Subject if by blanking out information the other individual's identity can be withheld.

If in doubt, seek further advice.

If the information to be disclosed includes a reference about the Data Subject, then;

- this will have to be disclosed subject to removing the name or other particulars identifying the person giving the reference - unless the referee has consented to the disclosure of his or her identity;
- if the reference was confidential e.g. as provided on the *Form RF Reference Form* it is likely that the reference cannot be disclosed without the referee's consent unless it can be done without disclosing the identity of the referee.
- If the reference about the Data Subject was provided by or on behalf of the Data Controller (i.e. the Scout unit), the reference does not need to be disclosed by that Data Controller.

Administration of Data

Each Scout unit must ensure that records of members - and any staff - are kept secure, up to date, for no longer than is necessary and in accordance with the Data Protection Principles set out in Section 1.

Each Scout unit should appoint someone to act as the Data Processor and to be responsible for the day to day processing of the data. Suitable and reasonable security measures should be put in place to safeguard the storage of the data.

Internet Web Sites

If any Scout unit chooses to publish information about itself on an Internet web site, no Personal Data, which identifies young people, should be put on it under any circumstances. If adult members can be identified, consent to the publication of their details must be obtained.

As a general rule, it is best to avoid naming any individuals. If they are Leaders or office holders, their job titles will suffice.

The Association has produced a fact sheet entitled *Developing a Scouting Web Site* which is available from the Information Centre. Any Scout unit proposing to set up a web site would be well advised to obtain a copy.

Other Sources of Information

The Data Protection Office has produced two booklets entitled *The Data Protection Act 1998* and *An Introduction and Notification Exemptions – A self-assessment guide*.

These can be obtained from The Office of the Data Protection Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF. Information Line: 01625 5245700. They are also available for downloading from its web site: <http://www.dpr.gov.uk>

Please note: The Scout Association has sought to ensure that the information in this fact sheet is correct. A draft was shared with the Office of the Data Protection Commissioner before publication. The Association emphasises that the content is not comprehensive and may be subject to change depending on how the 1998 Act operates in practice. Advice should be sought from the Information Centre or the Data Protection Office for specific situations.

Pro Forma Letter to Parents

[This letter should be modified to include details of the actual information that the Group will hold.]

Dear Parent,

Membership Records

The Scout Movement in the United Kingdom is a membership organisation. To enable it to operate - and to communicate with its members - it is necessary to maintain records about them.

This will include keeping details of name; address; date of birth, contact telephone numbers. We will also be keeping details of your son's/daughter's progress through Scouting (badges gained etc). Information held in our Scout Group may be shared from time to time within Scouting including the Headquarters of the Association.

New legislation came into force in March 2000 which covers the protection and processing of personal data. Adults and young people have the same rights under the Data Protection Act 1998. The Act covers paper based (as well as computer based) information.

Certain information is classed by the law as 'Sensitive Personal Data' In a Scouting context this may include information about your son's/daughter's:-

- health. (to ensure that we are prepared for medical emergencies it is important that we hold relevant information.)
- disabilities (to ensure a safe integration of your son's/daughter's participation in activities, details of any disability need to be known.)
- religious or similar beliefs (this will help us ensure that we make appropriate arrangements when necessary.)
- racial or ethnic origin (again this will help us ensure that we are sensitive to cultural needs of our members).

To hold this 'Sensitive Personal Data' we will need your explicit consent. This can be given by completing the enclosed form

All the information will only be used in connection with your son's/daughter's membership of the Scout Movement in the United Kingdom - this will include membership management and communications.

Any of the information provided will not be passed to any third parties outside the Scout Movement without your consent. You can give your consent by completing the question on the form.

If you have any questions please do not hesitate to contact me.

Yours sincerely

Group Scout Leader / Group Chairman / Group Secretary

The following paragraphs should be included in a parents consent form/letter. The second paragraph should be modified as appropriate.

I accept that the Scout Group will be keeping information about my son's/daughter's membership of the Scout Movement for Scouting purposes.

I give explicit consent to the holding of information of my son's/daughter's health; disabilities; religion/faith; race/ethnic origin again for Scouting purposes.

I give/do not give consent to the disclosure of any of information held to third parties associated with the Scout Movement in order that they may offer products and services which may be of interest.