Data Protection Act 2002

On 1st April 2003, the new Data Protection Act came into force in the Island to strengthen every individuals existing rights and create some new ones. With the further protection for data subjects, this is likely to cause more work for the "data controllers" - every company firm or public authority on the Island in charge of "personal data" (which is recorded information concerning an identifiable living individual, including any opinions recorded about that individual). In practice, the Act is likely to affect nearly everyone - that is: employers, employees, anyone who pays rates, operates a bank account or obtains a refund from high street chain store.

Data Subjects

Your right to obtain information concerning the data held about you, for no more than £10 from the data controller, remains. This is subject to certain exemptions and exceptions; such as any duty of confidentiality owed to another individual. This means you continue to have a right to know what personal data they keep about you (including their opinions of you, if recorded!), the purposes for which the data are being processed and also the classes of recipients to whom the data maybe disclosed.

The relevant data controller should have informed you of most of this information at the outset, if its obligation to process your data fairly has been discharged. (This information may be contained in a contract, or terms of business, you have with them.)

Protective conditions have to be met for any data controller to process your personal data and your "sensitive personal data" fairly. Sensitive personal data is a newly distinguished type of personal data that consists of information including racial or ethnic origin, your political opinions, religious beliefs, trade union membership or not, your physical or mental health, sex life or commission or alleged commission of an offence. You can now prevent data about you being processed which is likely to cause you (or anyone else) substantial damage or substantial distress and failure for a data controller to comply, after receipt of specified reasons, will entitle you to apply to the High Court for an order to enforce compliance.

Next time you receive junk mail, you can write to tell them to cease now you can opt out of having personal data about you used for direct marketing. In fact, why wait until you are sent junk mail? You can even write to a data controller before they begin to directly market and tell them that until you notify them otherwise, you do not want to receive any advertising or marketing material from them at all! (Data Controllers, such as banks or financial institutions who try to sell products to you by telephone when you have rung them about something entirely different, should not do so if you have opted out.)

You can now opt out of fully automated decision-making about you too. Fully automated decision-making is often used to determine creditworthiness and you may even find it is currently being used for evaluating your performance at work!

Always keep a copy of any written notice you send to object or opt out and if the data controller fails to comply, you can apply to the High Court for enforcement of your rights or ask the Supervisor to investigate

Data Controllers

All the data protection principles, (which are restated in the new Act) now apply to the "processing" of manual data held within a relevant filing system, in addition to data held by computer. ("Processing" includes nearly everything you can do with information such as obtaining, recording, holding, destroying and disclosing it. Even holding an e-mail address can be processing personal data.) There is no need to make a "notification" (as registration is now called) to the Data Protection Supervisor (previously, the Registrar) regarding manual data, but the Supervisor can take action for breach of any applicable data principles now, whether or not data has been notified. (There is a transitional exemption from most of the data principles regarding manual data in existence on the commencement date, until 21st October 2007, to give time for compliance.)

Although EU Directives do not, as a general rule, apply to the Island, the Data Protection Directive is effectively implemented by the new Act, so personal data can not be transferred off the Island to another country, unless the other country provides adequate protection (or certain exceptions apply). One method to ensure adequacy is to contractually bind the entity to which the data is being transferred, to maintain the same standards of data protection as is required pursuant to the EU Directive applicable in Member States.Existing registrations remain valid until they would have expired under the old Act (five years from the initial registration or last renewal) but you should ensure you notify the Supervisor of any changes. Don't forget that if your website contains personal data (with personnel profiles, for instance) or it can receive personal data from individuals (such as their e-mail address to contact you) you should ensure you are registered for this purpose too and that your website complies with all the data principles in addition to your intranet and your manual data held in relevant filing systems.

This may be a good time to review your website, contracts (employment and with third parties), standard terms of business, provide further training for staff, increase your security for data, even carry out a data protection audit and risk assessment.

Ignorance is no defence. It is more important than ever that your staff 'on the coal face', in addition to your compliance team and human resources, understand the principles of data protection and the new rights conferred by the new Act, so that no inadvertent breaches occur and penalties such as fines and compensation in addition to bad publicity do not arise.

Contact Us

Contact Simcocks should you require any data protection advice.

This document is not intended to provide legal advice. It is intended to be a discussion paper. If you would like further information or legal advice on any of the matters referred to in this document, please contact Irini Newby on +44 (0)1624 690300 or by email at

inewby@simcocks.com

In the Isle of Man
Ridgeway House
Ridgeway Street
Douglas
Isle of Man IM99 1PY
Tel: +44(0)1624 690300
Fax: +44(0)1624 690333

This document is intended to provide a general overview and should not in any way be construed as legal advice. Always seek specific advice in respect of any particular issue.

Issued by: Simcocks, Ridgeway House, Ridgeway Street, Douglas**,** Isle of Man, IM99 1PY
Tel: 01624 690 300 *Email:* enquiries@simcocks.com *Web:* www.simcocks.com

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