
GUIDANCE NOTE ON THE DATA PROTECTION ACT 1998

Information for clubs & county associations

Guidance Note on the Data Protection Act 1998

This guidance note gives an overview of how the Data Protection Act 1998 (the "Act") applies to clubs and county associations. It suggests a series of steps to be taken to help them comply with the Act.

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/her political opinions, religious beliefs, trade union membership, sexual life, physical or mental health condition or criminal offences or record. Where clubs, county associations 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 individuals' 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 (<http://www.ico.org.uk>) is very helpful and includes detailed guidance notes on many aspects of the Act.

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

5 Practical Steps towards compliance

England Squash recommends that clubs and county associations undertake the following steps:

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

① Allocate Responsibility

Compliance responsibilities will naturally fall to those officers, staff and volunteers of clubs and county associations 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 county associations appoint a data protection officer.

② 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 the ICO website
(<http://www.ico.org.uk/for-organisations/register/>).

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 intends to allow its member or candidate details to be used by another organisation for marketing purposes.

The ICO has issued a Self Assessment Guide that includes a series of simple questions to work through to determine whether an organisation needs to notify the ICO.

This guide is available online on [the ICO website](#). It also operates a notification helpline 01625 545 745.

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 is exempt from notification it still needs to comply with the Act.

3 Audit & Review forms and website

- Identify collection processes (e.g. Membership application forms, 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

An example Data Protection Notice for a membership application is set out below. If the club intends to share the personal data with England Squash and/or other organisations or between members (e.g. by way of a membership handbook with members contact details or via the web) this **MUST** be stated in the data protection notice and the data subject given the opportunity to object.

Example Membership Data Protection Notice

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 and if elected to membership, dealing with you as a member of [insert name of club]. Your data will not be shared with any third party for marketing or commercial purposes without firstly obtaining your explicit consent. Provided you give your consent below we will (a) include your contact details in our membership handbook which will be available to all members; and (b) provide your email address to England Squash, the governing body, solely so England Squash can email me with details of [how I can activate my membership of][join] England Squash.

☐ I am happy for the inclusion of my contact details in [insert name of club] membership handbook.

☐ I am happy for [insert name of club] to provide my email address to England Squash solely so England Squash can email me with details of [how I can activate my membership of / join] England Squash.

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

4 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 Act. A club 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 has published guidance notes](#) on how to deal with subject access request and the type of data which does not have to be revealed.

⑤ Think DPA for all new club initiatives

If the **type of activities undertaken** by a 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 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 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 county associations
- **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 **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.

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...

CRIMINAL 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 Disclosure and Barring Service (DBS). 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 DBS, 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 and county associations 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.



Disclaimer:

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