



## The Data Protection Act 1998 and Genealogists

The Data Protection Act 1998 was drawn up in response to EC Directive 95/46/EC and is a revised and updated version of the Data Protection Act 1984. Like its predecessor, the 1998 Act aims to control the way personal information is handled both in computers, and (from October 2001), in manual records held in 'relevant filing systems'. The Information Commissioner (formerly the Data Protection Registrar) is responsible for implementing the Act.

Data Protection legislation is complex and this leaflet aims to explain the main points as they affect genealogists. It should be remembered that **this leaflet is a guide only and not a source of legal advice**. Further information regarding the Act can be obtained from the Data Protection Website. Details are given at the end of this leaflet.

### What is 'data'? Definitions of terms used by the Act

The 1998 Act defines data as information which:

1. is being processed by means of equipment operating automatically in response to instructions given for that purpose.
2. is recorded with the intention that it should be processed by means of such equipment
3. is recorded as part of a relevant filing system (ie a system relating to individuals that is structured so that information about individuals is easily accessed –eg by name) or with the intention that it should form part of a relevant filing system. This category is new, and relates to manual records, such as card indexes.

**Personal data** is data relating to a living individual who can be identified from those data or by those data and other information likely to come into the possession of the data controller.

**Sensitive personal data** is personal data containing information on the racial or ethnic origin; political opinions; religious beliefs; trade union membership; physical or mental health, sexual life; commission of an offence or alleged commission; and any action taken by a court with respect to any offence.

**Processing** means 'Obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data'. In practical terms, if you have personal data on your computer, it can be defined as being processed.

A **Data Controller** is a person who 'determines the purposes of which and the manner in which any personal data are or are to be processed'. This would be the individual genealogist, or someone appointed by their group or society. The Data Controller has to ensure that all the **Data Protection Principles** are complied with for any data held.

### Who is covered by the Act?

The Act applies to **living individuals** only. It does not cover companies or other organisations. If you are not sure whether an individual is living or not, assume a 100 year life span.

Under the 1984 Act, those holding manual records only were exempt from its provisions. This situation has now changed. Although those holding manual records only before 24th October 2001 are exempt from the main provisions of the Act until the 24th October 2001, you should start making preparations now. **Manual records are only covered as set out in data definition c above**. Records not structured primarily to give information about people (such as minutes) are not covered by the Act; however, they will be brought within its scope if a card index of people mentioned in them is compiled.

Some people or organisations may not have to comply with some or all of the Act, (particularly notification) and this is covered below in the 'Notification' section.

However, please remember that **even if you are exempt, you must always store, process and distribute data in a responsible way.**

### **The Eight Data Protection Principles**

The Act sets out eight Data Protection Principles.

Personal data should be:

#### **1. Processed fairly and lawfully**

Schedule 2 of the Act sets out the conditions under which data processing can take place. The conditions of most interest to genealogists are:

1. The processing is necessary for the performance of a contract to which the data subject is a party (ie recording details for a membership database, or recording genealogical research carried out for a client).
2. The processing is necessary for the purpose of legitimate interests pursued by the data controller or by a third party to whom the data are disclosed, except where processing will jeopardise the rights or freedom of the data subject. (NB the Secretary of State may specify particular circumstances in which this condition is taken to be satisfied or not).

- **Obtained for a specified and lawful purpose and should not be processed in a manner incompatible with that purpose.**

Section 33 of the Act allows data to be processed for research purposes if they were originally obtained for another purpose. This exemption is only valid if the data are not used to support measures or decisions about certain individuals and are not processed so as to cause damage or distress to the data subject. When collecting personal information from individuals, you should explain to them why you need it and what it is to be used for. If you intend to distribute information about them to other genealogists, you should ask their permission when you obtain the information.

- **Adequate and not excessive for their purpose.**

So don't keep reams of highly sensitive but essentially useless information or speculation on any living individual.

- **Accurate and up to date**

- **Not kept longer than is necessary.**

Section 33 also exempts research from this principle, as long as the relevant conditions (see Principle 2) are met.

- **Processed in accordance with the rights of data subjects under the Act**

These are explained in Section 11 of the Act. For genealogical purposes, this means that data subjects should be allowed access to the information held about them, and that the data should not cause any damage or distress to the data subject.

- **Kept secure against accidental loss, destruction or unauthorised processing.**

- **Not transferred to a country or territory outside the European Economic Area (all 15 EU member states plus Iceland, Norway and Liechtenstein) unless that country ensures an adequate level of protection for the data subject.**

Schedule 4 of the Act mentions circumstances where this principle does not apply. Of interest to genealogists is section 8 of the schedule, which states:

*The transfer is of part of the personal data on a public register and any conditions subject to which the register is open to inspection are complied with by any person to whom the data are or may be disclosed after the transfer.*

This may cover entries in the registers at the Family Records Centre, but the term is vague. There are moves to widen the areas to which data can be transferred and those covered by the Act should consult the Data Protection Commission to see what the current position is.

These principles are intended to protect the rights of data subjects (those whom personal data is about). Even if you do not need to notify the Commissioner you must comply with the Principles, unless there is an exemption that directly relates to you.

### **Notification**

The notification system replaces the Register set up under the 1984 Act.

### **Who should notify?**

The Office of the Information Commissioner and the Registration website both contain useful information on who should notify. There is a helpline number (given below) and an online self-assessment questionnaire. The information below is a general guide only - you are advised to consult either of the above before deciding on whether you should notify or not. You can notify voluntarily if you are not officially required to.

### **Individual Genealogists**

If your research is a hobby only, you can probably claim exemption from the Data Protection Principles and from notification under Section 36 of the Act. This states that:

*Personal data processed by an individual only for the purposes of that individual's personal, family or household affairs (including recreational purposes) are exempt from the Data Protection Principles and the provisions of Parts II and III.*

However, you should adhere to the Data Protection Principles as best practice – particularly when making data available to other people. There is a wider discussion of this exemption in *The Data Protection Act 1998: Guidance Notes for Family History Societies and their members* by David Lambert (The Federation of Family History Societies).

### **Professional Genealogists/Record Searchers**

Professional genealogists and record searchers run a business and are covered by the Act. You should comply with the Data Protection Principles and notify the Data Protection Commissioner.

### **Family History Societies/Other Genealogical Interest Groups**

Schedule 8 of the Act exempts unincorporated clubs and members' lists from registration, provided that they:

- do not disclose data unless the member has given his or her consent;
- ask all members whether they object to their data being stored by the society or group.

New members can be asked to register their objections/acceptance on the application form to join (as long as the form clearly states why the data is needed), while existing members can be informed via an entry in the society's journal or newsletter.

Remember that if you hold data about potential members or non-members, you should register.

It is vital that you consult the Data Protection Office's help line or online leaflet to confirm your need or not to register.

### **Manual Records**

You do not have to notify if the only personal data you hold is in a manual filing system and if you held that data before 24th October 1998. This exemption is due to end on 24th October 2001, so you should check with the Commissioner about registration then.

## **Notification**

Notification forms can be obtained by post, email or telephone. Notification can also be carried out online. A fee of £35 per notification is payable.

Notification should be renewed each year.

Once you have notified, you should adhere to the Data Protection Principles, and **process data only as described on your notification form.**

Genealogists notifying can use a template prepared specifically for them, which is available on the Data Protection Website. A copy can be found in the Appendix. This template can be edited as necessary.

**Even if you do not need to notify, you should adhere to the principles, unless there is a specific exemption in the Act.**

## **Conclusion**

Please remember that the main aim of the Data Protection Act is to protect the rights of individuals. It is not there to make life difficult for genealogists! You do not have to destroy your research as long as you ensure that it complies with the provisions set out above or that you are exempt.

Provided you act responsibly, and consult the Commission if you need to, there should be no problem in complying with the Act.

## **Useful Publications**

*The Data Protection Act 1998*

Available from HMSO (price £10.30), or can be consulted on the Data Protection website.

*Introduction to the 1998 Act* (Data Protection Commission 1998)

Available from the Data Protection website – can be ordered or downloaded.

*Notification Exemptions: A self-assessment guide*

*Notification Handbook - A Complete Guide To Notification*

Can be downloaded from the Data Protection Register website.

*The Data Protection Act 1998: Guidance notes for family history societies and their members* by David Lambert. (The Federation of Family History Societies 2000).

Can be ordered from the Federation at Artillery House, 15 Byrom Street, Manchester, M3 4PF.

## **Useful Addresses**

### **The Data Protection Act in general**

The Information Commissioner

Web: <http://www.dataprotection.gov.uk>

Information Line 01625 545 745

e-mail: [mail@dataprotection.gov.uk](mailto:mail@dataprotection.gov.uk)

### **Notifying under the Act**

<http://www.dpr.gov.uk/>

The website contains a vast amount of information about notification, including advice on who should notify and an online notification service, which provides useful guidance (and templates) for filling out the notification form.

## **Appendix**

### **'N818 - Genealogist' TEMPLATE**

Purposes:

**Research - Family, local and historical research**

#### **Subjects**

Complainants, correspondents and enquirers  
Relatives, guardians and associates of the data subject

#### **Classes**

Biographical information in connection with family, local, historical research  
Family, lifestyle and social circumstances  
Personal details

#### **Recipients**

Data subjects themselves  
Relatives, guardians or other persons associated with the data subject  
Suppliers, providers of goods or services

#### **Transfers**

None outside the EEA

Names of countries:

This can be changed or added to where appropriate.