

## DATA PROTECTION ACT 1998 - ACT NOW!

*The Data Protection Act 1998 came into force in March 2000 and protects the rights of individuals to privacy of personal information. A transition period has been allowed between the Data Protection Act 1984 and the new Act but, for many key provisions, this ends in October 2001. The Information Commissioner, who supervises the operation of the Act, has made clear that she will actively use her substantial powers of enforcement to ensure compliance. If your charity is caught by the Act and does not have compliance procedures in place, the time has now come to act.*

### WHO IS CAUGHT BY THE ACT

The Act applies to anyone who "processes personal data" - a data controller. Personal data is any information about a living individual, stored either on automated systems, such as computers, or in a structured filing system, including manual records. Processing encompasses practically anything done with personal data, including storing, disseminating or even destroying it. This is much wider than the 1984 Act. If your charity processes personal information about employees, volunteers, supporters or beneficiaries, it will be caught by the Act.

### NOTIFICATION

Data controllers must notify the Information Commissioner of their data processing activities; this information will be publicly available on the Data Protection Register. Charities may be exempt from notification but the exemptions are narrowly defined. Failure to notify is a criminal offence not just for the charity but also, in certain circumstances for its trustees or officers.

### THE DATA PROTECTION PRINCIPLES

Eight Data Protection Principles set down the standards of behaviour of data controllers. The overriding principle is that of fair and lawful processing. Individuals must be fully aware of an organisation's data processing activities before they submit personal information. A notice should always be included on any form used to obtain personal information, specifying what information is collected, what is done with it and who will receive it. In most cases, the individual's consent to such processing must be indicated by getting him or her to sign a statement on the notice to that effect.

### RIGHTS OF INDIVIDUALS

Individuals have certain rights under the Act. These include the right of access to their personal data and the right to object to direct marketing.

### PRACTICAL STEPS FOR COMPLIANCE

- Appoint someone to be ultimately responsible for compliance and training;
- Identify what personal data is held, about whom and what purposes the data is used for;
- Check that you have notified the Information Commissioner of your data processing activities;
- Check that on collection of personal data, a notice is included, specifying your data processing activities and obtaining the individual's consent;
- Keep your data under regular review to check it is accurate and up-to-date;
- Implement appropriate security measures to protect against unauthorised disclosure of data;
- Establish procedures to comply with individual's requests for access to data and objections to direct marketing; and
- ACT NOW!



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protecting your pool of information



## QUESTION TIME - YOUR QUESTIONS ANSWERED

**Q.** Our royal charter requires an AGM to be held for specified purposes - to note the annual report, to receive the accounts, to appoint new Council members (following election) and to re-appoint the auditors. Additionally we generally hold an EGM immediately following each AGM to deal with all other business requiring the consent of the general membership - e.g. to approve subscription rates for the following year and to approve any required changes in the bylaws. The question is whether or not formal minutes of these meetings are required. The charter and bylaws are silent on the matter. Traditionally we have produced minutes which are approved at the next meeting of Council and which are tabled a year later at the next A/EGM for information only, i.e. they are not on the A/EGM agendas either for approval or discussion. Therefore should minutes of AGMs be taken?

If 'yes', should they go the next Council for 'approval or noting'? Alternatively (or possibly additionally) should they be held over for a full year until the next AGM for formal approval and discussion when those who were present at the earlier meeting are likely to have forgotten what was said and those who were not present will not know? If 'no' what record of the meeting, if any, should be taken and who would approve/note it? There is one additional complication. When, as happened this time, changes in the bylaws were agreed it is necessary for the Privy Council to be petitioned to give their approval. Traditionally, we have sent a certified and sealed copy of the EGM minutes with our petition as evidence of the approval of the membership in general meeting. Without the minutes this would have to be a certified and sealed 'note' of the meeting.

## NEW INCORPORATED STATUS FOR CHARITIES

Discussions and a consultation process are under way for a new form of legal entity for charities. The new legal entity, which is unlikely to be mandatory, is likely to be called a charitable incorporated organisation (CIO). The concept behind it is similar to a charitable company incorporated under the Companies Acts i.e. the CIO will be a body corporate with a separate legal personality separate from that of its members, it will also be able to sue or be sued in its own name. Another advantage is that the members' liability should be limited to making a contribution to liabilities of the CIO in the event of it being wound up, in the amount of the guarantee in the constitution of the CIO.

Charitable companies set up under the Companies Acts are very common today, and do offer a degree of limited liability protection for both their members and trustees. However, the Companies Acts structure of a company is not completely suitable for a charity - but with no alternatives available, there is little option if the benefits of incorporation are sought by trustees.

The main differences between a company and a CIO, will be that the Charity Commission will be the registration authority as opposed to the two tier registration procedure of Companies House and the Charity Commission currently in place for charitable companies.

Primary legislation will be required to enable the CIO to exist and operate. It is not known yet when this is likely to come about. However, it is anticipated that it will deal with the procedure for the conversion of an existing Companies Acts charitable company to a CIO and the transfer of an unincorporated charity or charitable trusts to a CIO. All in all good news for the charitable sector.

**A.** It is important that you do have minutes of the AGM. This serves as a useful record of what was dealt with at each AGM. I would recommend that all minutes should be kept in some form of file or folder. As to the procedure for signing off these minutes, as your Charter is silent on this point, I think it really boils down to common sense, and it may be helpful to draw a comparison with company law in this respect.

At company law, section 282 of the Companies Act 1985 states that:-

- every company shall cause minutes of all proceedings of general meetings to be entered in the books kept for that purpose.
- any such minute, if purporting to be signed by the Chairman of the meeting at which the proceedings were had, or by the Chairman of the next succeeding meeting, is evidence of the proceedings.
- where minutes have been made in accordance with this section of the proceedings at any general meeting of the Company then, until the contrary is proved, the meeting is deemed duly held and all proceedings had at the meeting to have been duly had.

The usual procedure adopted is for the Secretary to make notes at each meeting of what passes and, subsequently, to enter the particulars in a proper minute book ready for reading and signing by the Chairman after they have been read and approved at the next succeeding meeting. Sometimes, minutes of AGM are signed by the Chairman at the next board meeting of a company. Should a member question the validity or correctness of the minutes, then again, taking a common sense approach, I would recommend that the nature of the criticism be considered, and clearly investigated if it is of a serious nature.

I would therefore recommend that minutes of AGMs should be taken. They should be signed by the Chairman of that meeting either at the next Council meeting or the following AGM or EGM. When changes in the bylaws come about, then you should continue to send a sealed copy of the EGM minutes with your petition to the Privy Council as evidence of the approval of the membership in general meetings. In other words, I think what you are doing is perfectly correct.

If you have any question that you would like answered in the next edition of our bulletin please send it to Ros Harwood.

## INFORMATION

**If you have any queries on any aspect of Charity Law please contact:  
Ros Harwood on 01904 625790**

This Bulletin is for the use of clients and will be supplied to others on request.

It is for general guidance only. It provides useful information in a concise form.

Action should not be taken without obtaining specific advice.

**The law is stated as at 1 October 2001**  
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