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# *The New Data Protection Law*

## *A Basic Guide*

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# The New Data Protection Law – a Basic Guide

## The new Data Protection Law and how it affects fundraising.

DRF Group Ltd has prepared this basic guide to the main provisions of the new Data Protection Act as it affects fundraising. Most of it came into force on October 23<sup>rd</sup> 2000.

The Act contains many other provisions, mostly unrelated specifically to fundraising and it is advisable that you familiarise yourself with the Act as a whole, once you have a grasp of the main provisions discussed in this booklet.

DRF Group Ltd provides specialist fundraising services to charities of all sizes. We have a particular expertise in developing support from individual donors at all levels of giving from small regular donations to major gifts and legacies. To find out more, please visit our website at: [www.drfgroup.co.uk](http://www.drfgroup.co.uk)

### **DRF Group Ltd – a specialist fundraising consultancy**

We have taken care to summarise the new position as accurately as possible, but are not holding ourselves out as specialist advisers on Data Protection or any legal matters. It would be unreasonable for readers to treat the information in this book as advice from a lawyer and readers concerned about Data Protection issues should consider taking legal advice. Readers downloading this document accept they are doing so on these terms

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# Contents

## **The basic rules**

What information is covered by the new law ..... Page 4

## **Treating the individual fairly**

The new requirement for 'fair treatment' ..... Page 5

## **What information is 'Personal Data'**

The kind of records now recognised as 'personal data' and therefore covered ..... Page 7

## **The new restrictions on obtaining, keeping and using 'personal data'**

The practical implications of the new law on gathering and using data ..... Page 8

## **Special new rules on 'Direct Marketing'**

The wider 'opt-out' from direct marketing which now has to be offered ..... Page 11

## **Sample Data Protection Statement**

We provide you with sample wording you can use to protect your use of data. .... Page 12



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# The basic rules

## Rule

### What information is covered by the new law

## Personal data must be processed fairly

**Personal data.** This means any information about any one and includes their name, address, phone number, types of involvement with the charity, donation history, business or other connections, family or personal circumstances.

Go to [page 7](#) for more detail on this

**Processed.** Processing means any gathering, exchanging storage or handling of data and includes storage on any computer or paper database.

Go to [page 7](#) for more detail on this

**Fairly.** The person about whom you keep data must have **consented** to you keeping information on them and must be **aware** of all the ways you plan to use the information.

Individuals have **rights** to prevent you ‘processing’ information about them, especially for research and direct marketing.

Go to [page 11](#) for more detail on this,

### Who has to ensure compliance?

The charity and its trustees have to ensure compliance but individual employees do not. Some infringements of the new amount to criminal offences by the trustees personally.

### Action summary

- Treat all data as covered rather than try to pick holes in the legislation to avoid its provisions.
- Set up a procedure for all employees to follow.
- Publish a Data Protection Policy and incorporate this in communications with people you hold data on.
- Create a simple but comprehensive form that tells the individual all he/she needs to know and gives clear opportunity for consent or ‘opt out’.

# Treating the individual fairly

## Rule

Every person has the right to fair treatment regarding data 'processed' about him or her. Fairness means that he or she :

- Has to know that personal information will be kept
- Has to consent to all the ways in which it may be used.

There are further rules about the quality and quantity of information that can lawfully be kept and used and how long it may be kept and used. For detailed information on this go to [page 8](#).

## How to ensure consent

**Written consent.** The best way to be absolutely sure that the individual has consented is to obtain a signature agreeing to the keeping and use of a clearly defined set of information about him or her. We call this a Data Protection Statement,

A specimen Data Protection Statement is provided at [page 12](#).

**Implied consent?** There are situations where it can probably be taken that an individual has impliedly given their consent to further use of information about them. For example if they have been a regular donor by standing order, it is strongly arguable that they have impliedly consented to you writing to invite them to renew their standing order when it expires.

## Three ways of getting information

**Newly obtained from the person him or herself.** If you obtain information directly from a person, the best thing to do is to include a Data Protection Statement reasonably prominently on the form on which the information is given.

**From someone else.** If you obtain information from someone else, the fact that they have permission to disclose it to you does not give you permission to use

it. You must obtain the individual's permission at the earliest opportunity.

So, for example, if you rent or swap a mailing list, you must give a Data Protection Statement to any person on those lists when you first contact them.

**Data you have had for a long time and don't use often.** Old data needs careful treatment. The fact that you were once in regular contact no longer gives you permission to revive contact for the original or a new purpose. The most sensible thing to do is to provide a Data Protection Statement when you first restore contact. So, if you plan to include a 10 year old list of life members in a special appeal, the best thing to do is to give them a Data Protection Statement with the first new contact.

## Action summary

- You must get specific, informed and freely given consent to keeping and using personal data. In practical terms this means giving the person a Data Protection Statement to sign.
- Consent can be given verbally or electronically as well as in writing.
- Consent can probably be implied from person's actions, for example, consent to contact about a subject can be implied from a person's inquiry about information on that subject.
- There are special rules about consent to keeping and using "sensitive data", including, for example, information volunteered about a medical condition e.g. if someone voluntarily tells you they have diabetes, asthma or a disability. See [page 9](#) for more in this.
- Check when you last gave a Data Protection Statement to any person you plan to contact. If longer than 12 months ago, it makes sense to include one at the next contact.

# What information is 'Personal Data'.

## Rule

The definition of **Personal Data** adopted by the Data Protection Commissioner is so wide that it is safer to assume that any 'set' ( i.e. more than one item ) of information you hold on anyone is 'Personal Data'. This includes:

- Staff and volunteer records
- Membership lists
- Mailing lists of publications or Christmas cards
- Fundraising databases, including:
- Lists of event attendees
- Lists of donor prospects
- Lists of trustees
- Lists of 'give as you earn' donors
- Lists for Gift Aid

Whether it is held on computer, in paper batches in preparation for computer inputting or in manual files the rule above applies equally.

## Action Summary

- Carry out a review of every list you hold on computer or paper and decide if it qualifies as 'personal data'.
- Match each list against the Data Protection Policy you have written and carry out the policy in relation to it.
- Set up a system that makes sure that any new list you create goes through this routine.
- Carry out an audit every year to check the policy is being fully applied

## The new Legal restrictions on obtaining, keeping and using ‘Personal Data’

### Rule

**In addition to the rules on consent** to obtaining and using data ([see page 5](#)), there are new rules on what **kind of data** you can obtain, its **quality and quantity** and for **how long** you can **keep and use** it.

The rules are:

**Purpose.** You can only obtain data for one or more specified and lawful purposes. Lawful purposes include fundraising, maintaining membership and pursuing the objectives of a charity. You have to specify the purpose you intend for the data at the time you collect it and disclose your proper identity.

**Use.** Having specified the purpose or purposes for obtaining the data, you cannot use the data for other purposes.

**Quantity.** The data must not be more than you need for the purpose you have stated.

**Quality.** The data must be accurate and, where necessary, kept up to date.

**Duration.** The data must not be kept for longer than is necessary to achieve the purpose or purposes you have stated.

**Rights.** The data can only now be processed in a way that does not infringe the rights of individuals under the new law. Go to [page 11](#) for more on this.

### What these new rules mean in practice

The new rules mean that you cannot simply gather or keep general lists of people and then use those lists for whichever purpose comes to mind. The new law gives every individual the right to have information about them used **only for the purpose** they gave their name and other data originally.

When making first contact with someone you cannot gather **more information than you need** for the immediate purpose you have disclosed. If the real reason for your activity is to build a general database (to mail, swap, rent out, sell Christmas cards and other merchandise to, promote legacies, invite to events etc.) you need to specify all these as your purposes, otherwise you are collecting more data than is immediately needed.

You must **not keep data for longer than is necessary** to achieve the originally stated purpose. It is likely that keeping names of people with whom you have not had any recent contact (e.g. lapsed donors, old lists of event attendees, former volunteers) is an infringement of the new law.

**Sensitive data.** There are even stricter rules on collecting and using what is termed 'sensitive data'. Of special relevance to fundraising, this includes details about someone's health. The effect of the new restriction here is that you cannot collect or use information about someone's health unless they have given absolutely explicit consent for the exact use you have in mind. So, if someone fills out a questionnaire from a cancer charity disclosing that he or she has cancer you cannot use that information for, say, legacy promotion without their explicit consent to this use.

## **Action summary**

- If you want your investment in database building of any kind to be safe from limitation on Data Protection grounds, you need to comply fully with the new law from the outset.
- Whether you are building a large donor database or just a small list of targeted individuals for events, functions and major donor cultivation, the effect of the new law is the same.
- This means covering all your intended purposes and

any possible future purposes in your Data Protection statement. Go to [page 12](#) for a sample of this.

- If you come up with a new idea for using a list originally created for a completely different purpose, you have to give a new Data Protection Statement to people on that list when you first use it for the new idea you have.

# Special new rules on Direct Marketing

## Rule

Every person now has the right to be given the opportunity to **‘opt out’ of receiving any unsolicited direct mail contact.**

This applies, whether contact is by way of appeals, newsletters, Christmas card sales, merchandise catalogue, volunteer registration or any other kind of postal communication that is marketing a service or product.

It also applies whether the person has existing contact or not, e.g has given to previous direct mail appeals from the charity concerned. **This is because direct mail even to previous contacts and donors is treated in the new law as ‘unsolicited’.**

If you **swap** mailing list information with any other organisation you must exclude any direct mail opt out names or identify them so that they can be excluded. This is in addition to any names which have opted out of list swaps with any other organisations.

## Action summary

**Include a clear opt out tick box** in the first contact so that the individual can decide not to receive any further direct mail appeals from your organisation.

- As an alternative to providing an opt out on first contact, it is legally arguable that giving someone an address to write to so they can request an opt out form complies with the new law. The danger of going down this route is of a later ruling by the Commissioner or courts that this is not a fair practice and illegal. This would leave you in the position of having to offer the opt out in the next contact.
- If a person ticks the opt out box they are also opting out of **list swap ( ‘reciprocal ‘ )** mailings from other charities.

# Sample Data Protection Statement

**Here is an example of a tick box panel providing the consent and opt out opportunities the new law requires.**

## **Respecting your privacy**

Thank you for making contact with [name of charity]. [ what your charity does ] is a huge task and we need all the help we can get. That's why your support is so valuable to us and why we ask your permission to write and let you know from time to time of all the different ways you could help, including buying Christmas cards, coming to events we organise, supporting us financially and many others.

However, if you would rather not hear about these opportunities, you are welcome to let us know of your preference at any time, or by ticking this box now [  ].

From time to time we may like to share mailing list information with other like-minded charities. This helps us to attract new supporters to our cause. If you would prefer us not to disclose your name to any other charity, do please let us know at any time, or by ticking this box now [  ].

If you have any concern at all about the way we respect your privacy, do please let us know by contacting [name and address of contact]. Again thank you for your support.

## **Want to stay up to date?**

To receive updates on this or other legislation affecting fundraising tick the 'update me' box on the Request Information page of our website: [drfgroup.co.uk](http://drfgroup.co.uk).