

## E7 DATA PROTECTION

The Data Protection Act 1998 came into force on March 1<sup>st</sup> 2000 and has substantial implications for the Church of England which affect every parish. The Act is designed to protect the rights of identifiable living individuals concerning information about them (known as *personal data*). It covers basic factual information (such as names and addresses) and expressions of opinion (such as in references).

The Act extends data protection to much of the personal data held in paper-based files (it previously applied only to information on computer). It also requires greater security where data is classified as sensitive (which includes a person's religious affiliation) and where information is passed beyond the European Union either directly or by being placed on the internet.

Notification used to be known as registration and is the process whereby a data controller informs the Data Protection Commissioner (DPC) that they are processing (handling) personal data. Each incumbent and each PCC is considered to be a data controller since they are separate legal entities who will be processing personal data. Each needs to decide whether they need to notify. PCCs may be exempt from notification under the 'not for profit' exemption, whereby lists (limited to names and addresses) held for purely administrative and accounting purposes do not require 'notification'. Clergy should not need to notify *unless* records of pastoral care discussions (relating to beliefs, relationships, opinions etc rather than dates of birth/ baptism and other factual information) are held on computer.

Even if the PCC and/or incumbent are exempt from notification, the remainder of the Act still applies to them and everyone in the parish handling personal data.

To notify, you should telephone the DPC notification helpline (01625 545740). You will be asked certain questions and then sent a form to complete and return with a fee of £35 (payable annually).

The Act sets out eight principles under which personal data may only be obtained, held or disclosed to others if:-

- Its use is fair and lawful.
- It is to be used only for specified purposes. Individuals should be told, in broad terms, what you are going to do with the information (unless it is obvious) before you use it and given the opportunity to opt out of it being so used.
- The information is adequate, relevant and not excessive in relation to the purpose for which it is to be used.
- It is accurate and up-to-date – so periodically all information held should be checked to ensure it remains accurate.
- The information is kept for no longer than necessary for the purpose – records of pastoral care discussions, for example, should not be kept for several years unless this can be justified.
- Individuals' subject access rights are honoured – see later.

- It is kept securely – addresses and phone numbers should not be left where they are open to abuse, and access to more sensitive information should be particularly restricted by either computer passwords or locks on filing cabinets etc as appropriate. What happens to old floppy disks and cds that contain records and may be lying around the church office or the study?
- Information should not be transferred to any country outside Europe without adequate data protection being in place.

The Act strengthens the rights of individuals to know what data about them is being processed and why. Processing non-exempt data without a notification to the Data Protection Commissioner (which replaces *registration* with the Data Protection *Registrar*) covering those purposes, or failing to comply with certain other provisions in the Act, are criminal offences.

An individual has the right to receive a copy of most paper-based information held about them by that organisation ('data controller') within 40 days of making that request. The 'data controller' may charge a fee of up to £10 for providing it. This covers all information held on computer and any correspondence and other papers from which that information might be deemed to be reasonably accessible. You do not, therefore, have to scour through minutes etc for any mention of the individual but you would have to produce accessible information held by any church officers.

The general principle is that as much information as possible should be shared with the individual. There are, however, limited categories of material that you may withhold from the individual in the interests of protecting the rights of other individuals to privacy and for the protection of crime etc. You are able to withhold any references that you have given (but not any you have received). When sharing with an individual the information that you hold about them, you must remove anything which would identify a third party. You may also be entitled to hold back information containing serious allegations (for example, of child abuse) if to reveal that information would compromise the proper investigation of those allegations. In such cases you should always seek advice from the Diocesan Registrar or the Bishop's Chaplain.

***"Do I or my church need to make a notification ?" (N.B. Notification, renewable on an annual basis now replaces the old Registration on a tri-annual basis.)***

All data users are required by law to abide by the Data Protection Principles, whether or not you enter a notification and whether or not your records are on paper or held electronically.

Notification is only required for records held electronically, but note the comment about abiding by the principles even for paper records.

There is an exemption for non profit making organisations using the data for administrative purposes. The Registrar seemed to think that most parishes would come under that exemption when storing records for administrative purposes.

There is an exemption for data stored by an individual for hobby purposes. So you can

hold data on living members of your family when researching your family history!

Clergy records for administrative purposes such as baptisms, weddings, church rotas, etc. should come under the non-profit exemption.

However, if a church or cleric holds pastoral counselling records that would need registration. The new requirements of the Act regarding sensitive personal data seem to be a catch all overriding other exemptions. The Registrar is taking the view that membership of a church says something about persons belief, and that brings it under the Act.

PCCs must:

- Identify a person responsible for compliance with the Act.
- Ensure that everyone is aware of the requirements of the legislation and only record information that could be shared if a subject access request is made.
- When collecting information ask for permission to store it and give people the option to opt out.

An individual has the right to complain to the Data Protection Commissioner (DPC) if they believe you have not handled their data properly. The DPC would then investigate and may require you to comply. Criminal offences apply in certain cases and the courts may impose fines. This, however, is most unlikely if you have made genuine attempts to comply with the legislation. You also need to bear in mind the pastoral difficulty that may result from honouring subject access requests if appropriate care has not been taken in what is kept on files.

If you wish to seek advice from the Data Protection Commissioner's office direct the contact details are:

Wycliffe House, Water Lane, Wilmslow, Cheshire. SK9 5AF.

Information Line: (01625) 545 745

Switchboard: (01625) 545 700

Fax: (01625) 524 510

Web site: <http://www.informationcommissioner.gov.uk/>