

Notification fee changes – what you need to know

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Introduction

What is the Data Protection Act 1998?

The Data Protection Act 1998 places obligations on organisations that use personal information and gives individuals certain rights.

The Act states that those who record and use personal information must be open about how the information is used and must follow the eight principles of “good information handling”.

Notification under the Data Protection Act 1998

Under the Act every organisation (data controller) that processes personal information (personal data) must notify the Information Commissioner’s Office, unless they are exempt. Failure to notify is a criminal offence.

Data controllers are required to inform the Information Commissioner of certain details about their processing of personal information. The Commissioner uses these details to make an entry describing the processing in the register, which is available to the public at: www.ico.gov.uk.

The main purpose of notification and the public register is to promote openness in the use of personal information.

Changes to the notification fee structure

Since March 2000 the fee for notification and annual renewal of a register entry has been £35 for all data controllers. From 1 October 2009, due to changes in legislation*, a two-tiered fee structure has been introduced.

The fee for any data controller with fewer than 250 staff remains £35. A higher fee of £500 is payable by large data controllers.

The two-tier structure is based on an organisation's size and turnover.

Over 90% of all businesses that are currently notified will be in Tier 1 and will continue to pay a fee of £35.

The criteria

The criteria used to determine if a data controller is in Tier 1 or Tier 2 are based on whether they have a turnover of £25.9 million or more **and** whether they have 250 or more members of staff, **except** where the data controller is a public authority. Public authorities with fewer than 250 staff will fall into Tier 1; public authorities with 250 or more staff will fall into Tier 2.

The following questions should allow you to easily determine which tier the data controller falls within.

Q1. Does the data controller have fewer than 250 employees?

YES The data controller is in **Tier 1**. The fee payable is £35

NO Go to Q2

Q2. Is the data controller a public authority as defined in the Data Protection Act 1998?

YES The data controller is in **Tier 2**.

NO Go to Q3

Q3. Did the data controller have a turnover of £25.9 million or more in their last financial year?

YES The data controller is in **Tier 2**.

NO The data controller is in **Tier 1**.

The fee payable for notification and renewal of register entries for data controllers in **Tier 1 is £35**, for those in **Tier 2 is £500**.

* The Data Protection (Notification and Notification Fees) (Amendment) Regulations 2009, SI 2009/1677

Supplementary provisions

There are some organisations that will always fall into Tier 1 regardless of their size and turnover. They are:

1. **Charities.**

In the new regulation "charity":

- **in relation to England and Wales**, has the meaning given in section 1 of the Charities Act 2006(a);
- **in relation to Scotland**, means a body entered in the Scottish Charity Register maintained under section 3 of the Charity and Trustee Investment (Scotland) Act 2005(a); and
- **in relation to Northern Ireland**, has the meaning given in section 1 of the Charities Act (Northern Ireland) 2008 (b).

2. **Small occupational pension schemes**

Small occupational pension scheme has the meaning given in regulation 4 of the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006.

3. **Organisations that have been in existence for less than one month.**

When does the new fee structure come into effect?

New notifications

Data controllers submitting a new notification form to the Information Commissioner's Office on or after 1 October 2009 will need to assess the level of notification fee they are required to pay.

Renewals

Data controllers whose notifications expire on or after 1 October 2009 will be required to assess the level of notification fee that is payable. Notifications must be renewed annually.

How do I pay?

The Information Commissioner's office currently offers the following ways to pay for your notification. These are:

- Cheque
- Direct debit

We will continue to accept these methods of payment from data controllers that fall in Tier 1. We regret that, due to constraints of our current registration system and during the transition to a new system, **we are unable to renew Tier 2 register entries by direct debit.**

Legal definitions

The following definitions apply in regard to the new fee regulations.

"member of staff" means any:

- employee;
- worker within the meaning given in section 296 of the Trade Union and Labour Relations (Consolidation) Act 1992;
- office holder; or
- partner.

Individuals that work part-time hours are counted as one member of staff.

The number of members of staff of the data controller is to be calculated by:

- (a) ascertaining for each completed month of the data controller's financial year the total number of persons who have been members of staff of the data controller in that month;
- (b) adding together the monthly totals; and
- (c) dividing by the number of months in the data controller's financial year.

“turnover”:

- in relation to a company, has the meaning given in section 474 of the Companies Act 2006;
- in relation to a limited liability partnership, has the meaning given in section 474 of the Companies Act 2006 as applied by regulation 32 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008; and
- in relation to any other case, means the amounts derived by the data controller from the provision of goods and services falling within the data controller’s ordinary activities, after deduction of:
 - trade discounts,
 - value added tax, and
 - any other taxes based on the amounts so derived.

Groups of companies need to assess the numbers of members of staff and turnover for each separate company in the group, not the overall group figures.

“data controller’s financial year” means -

when making a notification:

- if the data controller has been in existence for less than 12 months, the period for which it has been in existence on the date the fee is sent to the Commissioner; or
- in any other case, the most recent financial year of the data controller that has ended prior to the date the fee is sent to the Commissioner.

when renewing a register entry:

- the most recent financial year of the data controller that has ended prior to the date on which the register entry expires.

“financial year”, where a data controller has been in existence for 12 months or more:

- **in relation to a company**, is determined in accordance with section 390 of the Companies Act 2006;
- **in relation to a limited liability partnership**, is determined in accordance with section 390 of the Companies Act 2006 as applied by regulation 7 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008; and

in relation to any other case, means the period, covering 12 consecutive months, over which a data controller determines its income and expenditure.

“public authority” means:

a public authority as defined by the Freedom of Information Act 2000 or a Scottish public authority as defined by the Freedom of Information (Scotland) Act 2002.

The majority of organisations covered by freedom of information provisions are listed in Schedule 1 of each Act. Some are listed by name (e.g ‘the House of Commons’), others are listed by a description (e.g ‘any government department’).

The Freedom of Information Act 2000 includes, as public authorities:

- general (central government);
- local government;
- the National Health Service;
- maintained schools and other educational institutions;
- police;
- other public bodies and offices: England and Wales; and
- other public bodies and offices: Northern Ireland.

The Freedom of Information (Scotland) Act 2002 includes, as public authorities:

- ministers, Parliament;
- non ministerial office holders in the Scottish Administration;
- local government;
- the National Health Service;
- educational institutions;
- police; and
- others.

Copies of each Act can be found at the Office of Public Sector Information’s website (www.opsi.gov.uk).

More information on whether the data controller is considered to be a public authority can be found at, for data controllers in England, Wales and Northern Ireland:

- www.ico.gov.uk

and for data controllers in Scotland:

- www.itspublicknowledge.info

Want to know more...?

Why has the fee not increased for all data controllers?

The current fee structure does not reflect the level of regulatory activity that may be required under the Data Protection Act 1998 for data controllers (businesses) of various sizes. The flat fee structure sees small and individual businesses pay the same fee as large organisations that regularly process the sensitive personal information of millions of citizens. A tiered notification fee structure will more closely reflect the likely cost to the ICO of regulating data controllers of different sizes and will address the imbalance in the current fee arrangement.

The House of Commons Justice Committee Report Protection of Private Data, published on 3 January 2008, noted that it is an anomaly that the same basic registration fee of £35 is paid by data controllers, irrespective of size. The Committee considered that a 'graduated rate would be more appropriate, more likely to reflect actual costs, and more suited to providing an adequate income for the policing of data protection'.

Was there a consultation exercise regarding the change to the fee?

Yes. Between 17 July and 27 August 2008, the Ministry of Justice ran a public consultation on this and other proposals to amend the data protection regime in the UK. To supplement the consultation the Ministry held a stakeholder event on 28 August 2008, which also discussed the proposed change to the notification fee structure from a flat to a tiered structure. Respondents to the consultation and attendees at the stakeholder event were overwhelmingly in favour of a tiered notification fee structure. A majority of respondents agreed that the existing flat rate fee structure was no longer appropriate and that a tiered fee structure would ensure greater equality between data controllers.

Why are 'large' organisations required to pay a higher notification fee?

The higher fee payable by large organisations is directly proportionate to the level of resources invested by the ICO in regulating larger organisations.

What do data controllers get for the notification fee?

The notification fee funds the data protection work of the Information Commissioner's Office. Notification is only part of the work of this office. The Commissioner is charged with a wide range of activities in connection with data protection which includes promoting good practice, assessing complaints, providing information to individuals and organisations, and taking appropriate action when the law is broken. Further information can be found at www.ico.gov.uk.

What should I do if I haven't renewed my expired register entry before 1 October 2009?

You will be required to assess the level of notification fee that is payable. The flat notification fee structure no longer applies.

Compliance with the Data Protection Act 1998

Data controllers must comply with the provisions of the 1998 Act even if they are exempt from notification.

There are eight data protection principles. In summary, they require that data shall be:

1. fairly and lawfully processed;
2. processed for limited purposes;
3. adequate, relevant and not excessive;
4. accurate;
5. not kept longer than necessary;
6. processed in accordance with the data subjects' rights;
7. secure; and
8. not transferred to countries outside the European Economic Area without adequate protection.

Data protection checklist

This is not part of the notification process but this short checklist will help you to comply with the Data Protection Act. Being able to answer 'yes' to every question does not guarantee compliance, and you may need more advice in particular areas, but it should mean that you are heading in the right direction.

Do I really need this information about an individual? YES NO

Do I know what I'm going to use it for? YES NO

Do the people whose information I hold know that I've got it, and are they likely to understand what it will be used for? YES NO

If I'm asked to pass on personal information, would the people about whom I hold information expect me to do this? YES NO

Am I satisfied that the information is being held securely, whether it's on paper or on computer? What about my website? Is it secure? YES NO

Is access to personal information limited to those with a strict need to know? YES NO

Am I sure the personal information is accurate and up to date? YES NO

Do I delete or destroy personal information as soon as I have no more need for it? YES NO

Have I trained my staff in their duties and responsibilities under the Data Protection Act, and are they putting these into practice? YES NO

Do I need to notify the Information Commissioner, and if so is my notification up to date? YES NO

To help determine how well you comply with the data protection principles, please read the 'Data protection audit manual' at: www.ico.gov.uk.

The information you need when you want it

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