

## Press Release

### Data Protection – Latest Guidance

Most businesses in the UK process personal data even if just about their employees. Many need to be registered under the Data Protection Act (DPA) 1998 as breach of the Act is a criminal offence.

Claire Bell, a Director at Actons Solicitors says:-

“The Information Commissioner is in charge of the data protection legislation and has issued a number of useful guidance notes on the legislation. Most recently guidance has been updated on transferring personal data abroad. Not all our local clients know that there are restrictions on taking personal data outside the 25 EU countries such as to have it processed in India. It is possible to achieve this but strict rules on which we can advise you must be followed.

In addition new guidance on outsourcing has been issued. “The DPA requires you to take appropriate technical and organisational measures to protect the personal information you process whether you process it yourself or whether someone else does it for you,” said an Information Commissioner’s Office (ICO) statement. Outsourcing data processing to foreign suppliers does not absolve firms from protecting the data once it passes to a third party. In fact new guidance issued by the ICO seems to tighten up rules concerning a company's responsibilities to find an outsourcer who will safeguard the data. “The new guidance clarifies the old guidance which stated that in the case of a data controller to data processor transfer the 'data controller might reasonably conclude that adequacy exists without carrying out a detailed adequacy test'.”

If you need any advice on the transfer of data abroad, please call Claire Bell on **0115 9 100 200** or email [enquiries@actons.co.uk](mailto:enquiries@actons.co.uk)

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### Notes

1. The 8th data protection principle requires that personal information is not transferred outside the European Economic Area unless there is an adequate level of protection for the information, and an individual's rights in relation to that information. The Data Protection Act requires companies to consider all the circumstances surrounding the transfer of data when assessing the levels of protection, and not just the laws in the country to which it is sent.
  2. Deputy Commissioner, David Smith, said: "More and more companies are contracting out their data processing abroad. The rules governing the transfer of personal information overseas are therefore becoming increasingly important. A UK-based business outsourcing a call centre or other aspect of its data processing abroad remains legally liable for any failings. It could face legal action by the Information Commissioner's Office and by an individual even if a breach takes place outside the UK. We are therefore urging all businesses processing personal information abroad to study our updated guidance. It is in their interests to do so."
  3. The first piece of guidance consists of a comprehensive step-by-step legal analysis of how and when it is necessary to assess the levels of protection for the transfer of data. It also includes detailed guidance on the use of contracts, including outsourcing and binding corporate rules, and how and when the exemptions from the 8th principle apply.  
The second piece of guidance is a simplified summary, with clear examples for those wanting to get an overview of the requirements of the 8th principle, how it applies to their business, and how they can comply with it.
1. The updated guidance on transfer of data abroad is available on the ICO website at <http://www.ico.gov.uk/eventual.aspx?id=19630>

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