

Health Service Circular



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sets out a specific action on the part of the recipient with a deadline where appropriate

Data Protection Act 1998

Protection and Use of Patient Information

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NHS Trusts - Chief Executives
Primary Care Groups - Chairs

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For information about access to health records by the data subject:

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For information about an NHS body's notification and implementation requirements under the new Act:

Security and Data Protection Helpdesk
NHS Information Authority
15 Frederick Road
Birmingham B15 1JD
Tel: 0121 625 2711 Fax: 0121 625 1999

Additional copies of this document can be obtained from:

Department of Health
PO Box 777
London
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Fax 01623 724524

It is also available on the Department of Health web site at
<http://www.doh.gov.uk/coinh.htm>

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Data Protection Act 1998

Protection and Use of Patient Information

Summary

This circular highlights the main implications for the NHS of the Data Protection Act 1998 and associated Orders and Regulations and the consequent action NHS bodies should take in order to comply with the Act. It is not a complete description of the Act.

Action

Chief Executives should ensure that:

- all staff dealing with personal information are aware of the need for compliance with the Act and associated provisions, in particular those concerning the rights of data subjects (patients) in respect of access to and use of information in their health records;
- all staff dealing with personal information are also aware of the requirements of the common law duty of confidence as set out in *The Protection and Use of Patient Information* issued under cover of HSG(96)18;
- any arrangement with a third party to process personal data on behalf of the organisation is subject to a written contract which requires compliance with appropriate security and confidentiality arrangements;
- Research Ethics Committees and researchers working on personal data are made aware of the differences between the new Act and the 1984 Act as it applies to the use of data for research purposes.

The Data Protection Officer, or other person with responsibility for data protection matters should:

- be aware of the detailed provisions of the Act and secondary legislation and of any subsequent guidance issued by the Department of Health and by the Data Protection Commissioner;
- be aware of the NHS Information Authority Action Plan for the NHS (which can be downloaded from <http://nww.standards.nhsia.nhs.uk/sdp>) and should ensure that the processing of personal data within the organisation is in compliance with the Act;
- ensure that notification of processing of personal data is made to the Data Protection Commissioner in the required form, including the new requirement for general details of the organisation's security arrangements*.

Background & Other Information

- 1 The main provisions of the Data Protection Act come in to force on 1st March 2000. Background information on the Act, its main provisions, and on sources of further information, is available on the Department of Health website*. An Action Plan provided by the NHS Information Authority was issued in December 1999 to assist NHS organisations in moving towards compliance with the legislation.
- 2 Transitional arrangements apply to personal data contained in a health record until 24 October 2007 to varying degrees*.
- 3 The Act provides safeguards for the processing of personal data. It does not of itself prevent NHS bodies from using personal data for legitimate medical purposes, including the management of healthcare services.
- 4 The common law duty of confidence continues to apply to personal data provided in confidence by patients and must be complied with to meet the first principle of the Act, which requires fair and lawful processing of data. *The Protection and Use of Patient Information* emphasises that all NHS bodies, and all staff working for the NHS, have a common law duty of confidence to patients. Although that guidance will need to be updated to take account of the new Act much still remains relevant. In particular patients should be informed in general terms about the purposes for which personal information may be used. References in that document to the Data Protection Act 1984 must be replaced by appropriate reference to the Data Protection Act 1998 when in force.
- 5 Department of Health guidance on patients' rights to access their health records sets higher standards than the Act in some respects*. All staff need ready access to the Data Protection (Subject Access Modification) (Health) Order 2000 and any guidance on it which becomes available.
- 6 NHS bodies should note that the Government has introduced a Freedom of Information Bill which will grant access to information held by a public body. It is anticipated that any application for personal information under such provisions would be treated as an application under the Data Protection Act. Further guidance on Freedom of Information will be issued in due course.

* **Guidance on these issues is available at www.doh.gov.uk/dpa98/**

This Circular has been issued by:

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