Registration by pension scheme trustees

Data Protection Act

Introduction

1. The Information Commissioner is responsible for promoting the Data Protection Act 1998 (‘the Act’) and enforcing that Act. He interprets the Act and provides advice about it. We do receive a number of queries about pension schemes. The most frequently asked question is whether trustees of pension schemes should register as data controllers under the Act.

2. If you are involved in the operation of a pension scheme you will appreciate the complexity of the pensions industry itself. There are a range of schemes available. In practice there also appears to be different ways of operating or administering even similar schemes.

3. The basic registration requirements of the Data Protection Act 1998 are straightforward. Broadly speaking a data controller – a person who determines the purposes for which and the manner in which any personal data are, or are to be processed – must register unless there is a relevant exemption for the processing in question. However in practice determining who the data controller is may not always be so simple. This always requires close attention to the facts of the particular case and the decision made should reflect the facts of the case.

4. There is no specific exemption from registration relevant to the processing of personal data for pension purposes. There is an exemption from registration where the processing is only of manually-held personal data. Apart from this exemption for manual records, the only exemption which may be relevant is the exemption at section 36 of the Act for personal, family or household affairs which includes exemption from registration.
If you are the sole member and trustee of an occupational pension scheme you may wish to rely on this exemption.

5. In many cases we can provide a straightforward and clear answer to those enquiring about their registration position in respect of their pension scheme related processing. In some cases we cannot. The decision whether to register is a matter for the data controller in the first instance. Failure to register when registration is required is a criminal offence. Any data controller seeking to rely on an exemption from registration would be well advised to document the basis for relying on the exemption in case the issue of non-registration is raised in future.

Broad summary of the general position

- Trustees of occupational pension schemes are likely to have to register with this office, except where the sole trustee is an individual who is also the sole member.

- The sole trustee in this situation may seek to rely on the exemption at section 36 of the Act for personal, family or household affairs which includes exemption from registration.

6. Bearing in mind the general points made above, you should now read the Frequently Asked Questions on the next page which amplify this statement.
Frequently asked questions

A.

Q1. I run my own business. I am a sole trader. I am the sole trustee for my own pension scheme. There are no other members. Am I required to register as a trustee of the scheme?

As trustee you are not required to register. (Section 36 exemption - see paragraph 4 above.)

Q2. I run a small family business. There is a pension scheme. All the members of the scheme are family members. All the trustees are family members. Are the trustees required to register?

The trustees are required to register.

Q3. I am a trustee of a small self-administered scheme (a SSAS). Do the trustees of the scheme have to register?

The trustees are required to register.
Q4. I run a company and we have an occupational pension scheme for employees. Do the trustees have to register?

The trustees are required to register.

Q5. I run a company and our employees contribute to a Group Personal Pension Plan. Should there be a specific registration for the pension schemes?

A registration is not required where each individual is responsible for his own scheme. (Section 36 exemption - see paragraph 4 above.)

Q6. My company has set up a Stakeholder pension scheme for its employees. Should there be a specific registration for the pension scheme?

Whether there should be a specific registration for the pension scheme will depend on how the scheme is set up.

If the scheme is set up under a trust, the trustees will be required to register.

If the scheme is not set up under a trust but each individual is responsible for his own scheme registration will not be required. (See Introduction.)

B. How do I register?

You can complete the online registration form at www.ico.org.uk or
You can telephone the registration helpline on 0303 123 1113. You will be asked for details about the organisation you are registering; name, address, contact details, the nature of your work; and to determine the level of fee you are required to pay you will need to know the number of staff you have and your turnover.

C. What happens if I don’t register but I should?

Failure to register when required to do so is a criminal offence.

Any data controller seeking to rely on an exemption from registration would be well advised to document the basis for relying on the exemption in case the issue of non-registration is raised in future.
D. What else do I have to do to comply with the Data Protection Act 1998?

As a data controller, whether you are registered or not, you must comply with the eight Data Protection Principles. Guidance on these can be found on our website www.ico.org.uk.

Need any further help?

For more information about your responsibilities under the Data Protection Act, guidance and free training materials please see our website at www.ico.org.uk.

You can also contact our helpline on 0303 123 1113.