

The exemption from registration for 'not-for-profit' organisations

Data Protection Act

This Good Practice Note aims to answer a number of questions regularly raised by charities and voluntary organisations about the exemption from the requirement to register under the Data Protection Act 1998 (the Act) for 'not-for-profit' organisations. You can find advice about other aspects of registration on the registration part of our website (www.ico.org.uk).

1. Who is this exemption for?

Organisations which are established for not-for-profit making purposes can be exempt from registration. The exemption may therefore be appropriate for small clubs, voluntary organisations and some charities. A not-for-profit organisation can make a profit for its own purposes, which are usually charitable or social, but the profit should not be used to enrich others. Any money that is raised should be used for the organisation's own activities.

Any organisation which is not sure whether or not it is a non-profit making organisation should get appropriate advice, probably from their accountant or legal adviser.

2. Are there limits on the processing for an organisation that uses this exemption?

The exemption is narrow and further conditions do apply.

The exemption applies to processing which is only for the purposes of:

- establishing or maintaining membership;
- supporting a not-for-profit body or association; or
- providing or administering activities for either the members or those who have regular contact with it.

This would include giving support to individuals. It is also clear that although the contact the organisation has with people should be regular, it does not need to be frequent. So an organisation that provides activities or support on an ongoing basis to the same individuals (even if a minority only contact the organisation once) will fall within the exemption. However, one that deals with either few or many individuals on a one-off or isolated basis, such as in a drop-in centre, will not.

The exemption also restricts:

- the type of personal information an organisation can hold;
- the people that it relates to; and
- the disclosures that an organisation can make;

to only those necessary for the purposes described above unless the individual agrees their personal information can be released. The information must not be kept after the relationship between the individual and the organisation ends, unless it is necessary for the purposes described above.

3. A large not-for-profit organisation has a head office and numerous independent branches across the country. The head office provides a range of umbrella services to the branch network, including membership administration, recruitment marketing campaigns and a variety of member benefit services such as tailored insurance and mortgage products. How does the exemption apply in these circumstances?

It is likely that the broad commercial nature of some of the head office functions will require it to register. The branches, as separate legal entities, will need to consider their own positions carefully. Where they exist to undertake limited social and charitable activities for their local membership and simply pass on to head office member enquiries and application forms for insurance and financial products, they may be able to rely on the exemption from registration.

4. Other issues for charities to consider when relying on the not-for-profit organisations exemption.

Some small charities may be able to meet the strict conditions of the exemption. However, many charities are large international concerns with significant donor direct marketing and merchandising activities operating on a semi-commercial basis. While they may be able to fulfil some of the relevant conditions, the range of

operations is likely to prevent them relying on the exemption. For example, a large charity may have offices and warehousing covered by CCTV equipment. Using this equipment means it is unlikely that an organisation can rely on the exemption. A charity that uses personal information to check its suppliers or creditors with a credit reference agency will not be able to use the exemption.

Even though an organisation may be able to claim an exemption, they can decide to make a voluntary registration. It is important to be aware that when an organisation relies on an exemption from registration, they still must comply with the eight data protection principles of good practice. They are still obliged to respond in 21 days to a written request to provide the information that would have been included in the public register if they had registered.

More information

If you need any more information about this or any other aspect of data protection, please contact us.

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