The Data Protection Act 1998 & Market Research: Guidance for MRS Members September 2003

This has been produced as a response to the Data Protection Act 1998 and replaces the MRS Guidelines for Handling Databases.

> "I welcome this guidance. It would not be appropriate for me to produce detailed bespoke guidance for all different sectors and industries. I am, therefore, pleased that the Market Research Society and other bodies have taken the initiative to produce guidance on the Data Protection Act 1998. This guidance, reflecting the MRS's detailed knowledge of the uses of personal data within their industry, should prove very useful to the market research community."
>
> Elizabeth France

This material is provided for information only. It is not legal advice and should not be relied upon as such. Specific legal advice should be taken in relation to specific issues.

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Appendix 3: Useful Addresses: where to get advice on wider data protection issues.

1. INTRODUCTION

The purpose of the following guidelines is to provide **all** members of the MRS with comprehensive advice on the implications of the Data Protection Act 1998 **when undertaking survey research**.

As this legislation is concerned with the processing of personal data, these guidelines **apply to anyone involved in the collection, processing and use of market research data** whether employed by or running agencies; as clients, whether in market research departments or other areas of the organisation; members working in advertising agencies; those working as independent consultants; fieldwork companies; interviewers (field, 'phone etc); recruiters working for qualitative agencies; observers at group discussions and companies providing central viewing facilities. All methodologies - quantitative and qualitative, and sample sources are potentially covered by the 1998 Act. They also apply to those projects where personal data are collected in a survey form but the information is then used for purposes other than confidential market research.

The guiding "construct" underpinning the 1998 Act can be summarised as that of **"informed consent"** which two has key components in terms of the fundamental rights of individuals being asked for or providing information about themselves:

- **Transparency** - ensuring individuals have a very clear and unambiguous understanding of the purpose(s) for collecting the data and how it will be used;

- **Consent** - at the time that the data is collected, individuals must give their consent to their data being collected, and also at this time, have the opportunity to opt out of any subsequent uses of the data.

In the case of market research these mean **ensuring that it is clearly spelt out to respondents at the beginning of the interview** that the information collected during the interview will **only** be used for confidential survey research purposes, and, that if a further interview is likely to be necessary the permission for this must be gained during the initial interview.

Article 1 of the EU Data Protection Directive requires member states ***to "protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data".*** The 1998 Act represents the UK implementation of revised data protection legislation to meet this overall objective. Whilst the principles of the MRS Code of Conduct have always respected this concept, the Code requires compliance with any and all national and international legal requirements affecting marketing research and therefore the MRS has always sought to advise members on any relevant implications from new, or changes to existing, legislation.

Up until now, guidance on data protection legislation has been contained within the MRS Code (general principles) and the various specialist guidelines published by the MRS in recent years in order to help members interpret and implement the Code when undertaking their day-to-day business. However, the Professional Standards Committee view the implementation of the new Act as an opportunity to draw all the necessary information into one publication.

In addition, the following guidelines take into account:

- Specific issues which apply to client owned customer databases
- Issues which are emerging in the development of customer satisfaction research
- Queries on data protection issues which the MRS has received direct or through Codeline.

In addition to the Data Protection Act 1998, the MRS and ICC/ESOMAR Codes and previous MRS guidelines, other reference material used in the preparation of the guidelines include:

- Annexe to Notes on the ICC/ESOMAR International Code of Marketing and Social Research Practice - European Union Data Protection Requirements (ESOMAR 2000)
- Notes on the ICC/ESOMAR International Code of Marketing and Social Research Practice (ESOMAR revised 2000)
- Guideline on Maintaining the Distinctions between Marketing Research and Direct Marketing (ESOMAR revised 2000)
- European Directive on Human Rights
- Data Protection - Guide to the Practical Implementation of the Data Protection Act 1998 (BSI/DISC PD 0012-1: 2000)*
- Data Protection - Guide to Managing your Database (BSI/DISC PD 0012-4: 2000)*
- Telecommunications (Data Protection and Privacy)(Direct Marketing) Regulations 1998, Data Protection Commissioner 1998
- Direct Marketing Code of Practice
- CCTV Code of Practice, Data Protection Commissioner July 2000
- Customer Satisfaction Research: a Briefing Paper for the Data Protection Commissioner (MRS 2001)
- Queries raised by MRS members with either Codeline or the MRS on issues relating to data protection.

These two BSI guidelines provide an excellent source of detailed advice and guidance on the overall implications and implementation of the 1998 Act. Copies are available from BSI to subscribers and are essential reading for those with responsibilities within their organisation for ensuring that data controller (see definition within Sections 2.2/4.2, below) obligations are met. Full details can be found on the BSI web-site: www.bsi.org.uk.

If members conform to the advice contained within this guideline then they will also be conforming to the Telecommunications (Data Protection and Privacy) (Direct Marketing) Regulations 1998.

Finally, the opportunity will be being taken to provide information on contacts in other EC countries for those members who need to understand the differences in how the European Directive has been interpreted and implemented and the consequences for survey research in those countries. The MRS will publish this information in due course.

2. THE DATA PROTECTION ACT 1998

It is important for members to remember that this legislation only covers data that identifies a living, individual, natural person. Once any identifiers linking data to a natural person have been removed then it no longer constitutes "personal data" and is therefore not covered by the provisions of the 1998 Act. It is therefore worth considering at what point in the survey process is the earliest that personal identifiers can be removed from the data.

The 1998 Act replaced the 1984 Act and is the implementation in the UK of the European Data Protection Directive. The British Standards Institute publication, **Data Protection-Guide to the**

Practical Implementation of the Data Protection Act 1998 (DISC PD 0012-1:2000) provides a practical and detailed overall interpretation, plus the implications of the 1998 Act. The following two sections draw on the content of the BSI guide.

2.1 Key Principles

The **eight core Principles** within the Act are shown below. The BSI Guide to the Practical Implementation of the 1998 Act describes these as the "rules of the game" - the fundamental basis of the legislation. These Principles are also included within the current MRS Code of Conduct and all members **must** become familiar with them and what they imply:

1. ***Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless:***
   - at least one of the conditions in Schedule 2* of the Act is met, and
   - in the case of sensitive personal data, at least one of the conditions in Schedule 3* is also met

2. ***Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or other purposes***

3. ***Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed***

4. ***Personal data shall be accurate and, where necessary kept up to date (with every reasonable step being taken to ensure that data that are inaccurate or incomplete, having regard to the purpose(s) for which they were collected or for which they are being further processed, are erased or rectified)***

5. ***Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes***

6. ***Personal data shall be processed in accordance with the rights of data subjects under this Act***

7. ***Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data***

8. ***Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.***

****See Appendix 2 for details of Schedules 2&3 and their relevance to market research.***

2.2 Data Protection Terminology

The new Act includes some important definitions. Those of particular relevance to survey researchers are as follows:

- **Data Subject:** a living, individual, natural person about whom data is held.

- **Consent:** this is not defined as such in the Act but the Directive describes this as the freely given and informed agreement by a person (i.e. Data Subject) to the processing of his/her personal data. The data subject may withdraw his/her consent at any time and

may attach any condition or limitation he/she believes to be appropriate. Data subjects must have a clear understanding of what will happen as a result of providing information **(transparency)**. In the case of market research it can be assumed that this condition has been satisfied by the respondent agreeing to be interviewed following an explanation of the nature and objectives of the research. There are certain occasions where it is permissible to process data without the consent of the data subject, but these exemptions are unlikely to be encountered when undertaking survey research.

- **Data Controller:** generally a legal person, but could be a living person in a sole trader or partnership business that determines the purposes for which, and the manner in which, personal data are or will be processed. Each legal entity has its own separate data controller status under the 1998 Act. The term "data user" no longer applies. **(See the next point below; Section 2.3, above and Section 4, below, for more clarification of the responsibilities of Data Controllers in relation to market research and databases).**

- **Maintaining confidentiality and data security:** data controllers are required to take appropriate steps, including steps of a technical and organisational nature, to protect personal data from accidental or unlawful destruction or accidental loss, alteration or disclosure. Data controllers (whether clients or agencies) **must** enter into **written** agreement with any contractors or subcontractor who is to process data on the data controllers' behalf. This must confirm the subcontractors agreement to process personal data in accordance with the data controllers instructions and to implement technical and organisational measures equivalent to those required of the data controller. This should preferably be part of the project contract between agency/client or agency/subcontractor.

- **Personal Data:** any information relating to an identified or identifiable natural person (i.e. a private individual as opposed to a corporate or other comparable entity). An identifiable person is someone who can be identified, directly or indirectly, in particular by reference to an identification number or the person's physical, physiological, mental, economic, cultural or social characteristics.

- **Personal Data Filing System:** any set of personal data which is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible. This currently only covers electronically held data but will progressively cover data held in manual form from October 2001 onwards.

- **Processing of Personal Data:** "processing" means obtaining, recording or holding data or carrying out any operation or set of operations on the data including: the organisation, adaption or alteration of the data; retrieval, consultation or use of the data; disclosure of the data by transmission, dissemination or otherwise making available; alignment, blocking, erasure or destruction of the data.

- **Sensitive data:** this is defined as personal information covering the racial or ethnic origin of the data subject; his/her political opinions; his/her religious beliefs of a similar nature; whether he/she is a member of a trade union (as defined within the Trade Union and Labour Relations (Consolidation) Act 1992); his/her physical or mental health or condition; his/her sexual life; the commission or alleged commission by him/her of an offence or any proceedings for an offence committed and the outcome. In the conditions for processing ***sensitive data*** (see Appendix 2), the Act also mentions **"Explicit Consent"** as one of the conditions. This means that the consent must be absolutely clear and based on a detailed explanation of how the data will be used and any disclosures, as appropriate. The data subject must have positively consented to provide their personal data. **However, if the data is being collected for the sole purpose of research (as defined in the Act, see Section 2.4, below and the MRS Code, see Section 3.1.1, below) then the requirements are the same as for consent in all market research**

projects, that is, to ensure respondents have a very clear understanding of how their data will be used before consenting to be interviewed, and, they know they have the right to withdraw this consent at any point in the interview. See Appendix 2 for more details.

2.3 Key Differences between the 1998 and 1994 Legislation

There are some key differences between the 1998 Act and the earlier 1984 Act. The points of **most relevance** to MRS members are as follows:

- The Act sets down conditions, one of which must be met before any data may be processed. There are also additional conditions, one of which must be met before any ***sensitive*** data may be processed (see **Section 2.2**, above)

- New rights for data subjects, including the right to prevent processing of data for ***direct marketing***. In particular, the Act provides data subjects with the right to request organisations to cease or not to begin processing his/her personal data for direct marketing purposes

- Data subjects will be entitled to obtain more information from data controllers than previously. For example, they are entitled to know the purposes for which the data is held, the data sources, and the category of any others to whom the data may be passed

- Reduced responsibilities for **data processors** (formerly called computer bureaux), but with a concomitant increase in duties and responsibilities for **data controllers** (formally called data users) with regard to their relationships with data processors. ***Section 4.1, below describes the implications of this for those conducting market research surveys***

- A wider definition of the term "processing". Effectively, this term now covers any operation upon data

- The 1984 Act included a distinction that exempted data held solely to contact a *function* in a business where the individual person holding the job was of no interest. This distinction has been removed and this is now counted as personal data
- Restrictions on transfer of personal data abroad

- New notification procedures, which replace the registration process under the 1984 Act. **The notification procedures and how they relate to market research are described in Appendix 1.** (Also see Section 5 of the BSI guide DISC PD 0012-1:2000 for full details).

2.4 Special Exemptions covering Research

The new Act provides for various **exemptions** in respect of the processing of personal data for research purposes, including statistical or historical purposes, (see Section 33 of the 1998 Act for full details):

- Personal data collected for research can be re-processed, provided that this is not incompatible with the purpose for which the data was collected (i.e. the purpose described to respondents);

- Personal data can be kept indefinitely, but this should not conflict with the fifth principle of the Act. The MRS Code requires primary data records to be kept for one year, but this may not be sufficient for certain types of projects, such as panels. As de-personalised data is exempt

from the Act, survey data which has been anonymised can be kept indefinitely with no restrictions;

- The rights of data subjects to request access to the personal data held about them does not apply once any personal identifiers (e.g. name and address, telephone numbers, e mail addresses, reference numbers etc) have been removed from the data. This means that respondents can request a copy of the primary data record (e.g. questionnaire) as long as it contains an identifier, or, any data held by the data controller in other forms (e.g. a database of panel members etc). Hence, it is advisable to remove any personal identifiers from the data collected in a survey as soon as is practical.

The processing of the data must be exclusively research purposes, and, the following conditions need to be met:

- The data are not processed to support measures or decisions with respect to the particular individuals; and

- The data are not processed in such a way that substantial damage or substantial distress is, or likely to be, caused to any data subject.

Where the exemption applies:

- The further processing of personal data will not be incompatible with the purpose(s) for which it was obtained;

- Personal data may be kept indefinitely despite the stipulations of the Fifth Principle (see **2.1** above).

This exemption will not be lost if the data is disclosed to any person for research purposes only, or to the data subject (or someone acting legitimately on their behalf).

There are other categories of exemption within the 1998 Act and these could apply to certain specific clients or projects. These are in areas such as national security, crime, taxation, health, education, social work, regulatory activity, journalism etc. Full details are listed in the Act.

These exemptions are not a substitute for openness and transparency.

2.5 Implications for Database Users or Managers

Those engaged in market research, on all sides of the industry, are increasingly developing or using databases containing personal data either to hold information or as sampling frames. This growing use was reflected in the MRS Guidelines for Handling Databases, issued in 1994. However, the new Act places increased responsibilities on data controllers to ensure that databases are properly managed. For the generalised impact of this, members are advised to read the guideline from the British Standards Institution specific to databases, **Data Protection - Guide to Managing your Database (DISC PD 0012-4:2000).** The points within the BSI Guide are illustrated with examples.

Other implications for those involved in survey research are covered in **Section 4**, below.

2.6 Implications of the Human Rights Act 1998

Issues under this legislation have yet to be defined, including how the provisions relate to other European and national laws. The legitimacy of some activities may need to be re-considered as a result of this legislation.

It does contain Articles that are likely to strengthen the Data Protection Act 1998. Two examples illustrate this. Firstly, Article 8 contains the right to respect for private and family life, home and correspondence, and therefore covers wider ground than the more specific rights concerning personal data in the DP legislation. Secondly, the HRA legislation may over-ride activities deemed legal within earlier legislation - currently, the Information Commissioner is reviewing how this might apply to certain data matching activities.

3. DEFINITIONS OF SURVEY RESEARCH AND CATEGORIES OF DATA PROCESSING PROJECTS

As described in Section 2, above, the 1998 Act imposes some important changes in the collection and processing of personal data. Discussions with the Data Protection Commissioner's office have also indicated some concerns over the extent to which certain types of projects are truly based on the principles within the MRS or ICC codes, or whether they are being conducted primarily as a marketing activity. This particularly applies to projects conducted to measure customer satisfaction. To meet these needs, the MRS have reviewed the definitions of survey research and the spectrum of projects conducted under the overall term "marketing research". The following paragraphs therefore include a revised definition of market research together with advice and guidance specific to projects where the sample is drawn from a client's customer database. Finally, a categorisation of projects is included to help members understand where the boundaries should be drawn in terms of any feedback to client organisations within the terms of the 1998 Act and the MRS Code of Conduct that also might lead to data disclosure for purposes other than confidential survey research.

3.1.1 "Classic" Survey (or Market) Research

This will meet the strict terms of the MRS Code of Conduct and is defined as:

"The application of scientific research methods to obtain objective information on peoples attitudes and behaviour based usually on representative samples of the relevant populations. The process guarantees the confidentiality of personal information in such a way that the data can only be used for research purposes."

There are some small but necessary changes in what can be undertaken under this heading in order to keep within the 1998 Act and meet the expectations of interviewees in certain specific circumstances (see **Section 3.2** below).

"Classic" covers quantitative and qualitative market research.

3.1.2 Data Processing for Purposes other than Market Research

This covers projects where the personal information collected in the questionnaire/interview may be used by the client/end user for purposes **in addition to or other than can be described as "Classic" confidential survey research (e.g. at an individual respondent level for purposes in addition to or other than market research).** A prime example would be where the data collected in the interview is sent to the client who attaches the information to interviewees records on a database (i.e. where the data is used at an "attributable" level) for use in follow-up contacts (e.g. database enhancement/direct marketing purposes etc).

A number of conditions must be met in undertaking this type of project in order to keep within the 1998 Act and ensure that there is a clear distinction from "Classic" research. These are described within the MRS guidelines for collecting data for attributable purposes, reproduced within the attached Appendix 3. The key points are as follows:

- Respondents must have given their **informed consent** to their data being used for **specified** other purposes, and, have had the opportunity to **opt-out** of any follow-up activities (i.e. the purpose(s) of the survey must be clearly stated to and understood by the respondent). If sensitive data is being processed then the requirements in Schedule 3 of the Act will apply will apply - i.e. that the data subject has positively consented to provide their personal data.

- Any projects that include information collected for "Classic" and other purposes on the same questionnaire/interview **must not** be positioned as "Classic" survey research. Particular care must be taken to ensure respondents are not confused in terms of how their data will be used.

- MRS IID Cards and standard "thank you" leaflets **must not** be used by interviewers working on such projects nor must there be any mention of the MRS Code or MRS Freephone in the interview, questionnaire or covering letter;
- Organisations undertaking this type of project should ensure that they are appropriately registered within their notification.

- Those working on these types of projects may also need to be familiar with the Direct Marketing Association (DMA) Code of Conduct.

As the very existence of "Classic" market research depends on the willing co-operation of the public and organisations which are the subjects of research, it is essential that this willingness to co-operate, and to reply honestly and fully to the questions being asked, are not prejudiced by confusion or suspicion about the nature of marketing research projects or about the guarantees of confidentiality given to respondents, or, about the purposes for which their data have been collected.

3.2 CATEGORISATION OF DATA COLLECTION PROJECTS

Section 3.1, above describes new terminology to differentiate "Classic" research projects from those where the results are to be used for other purposes, in particular at a personal level. The rapid rise in the number of client organisations who hold databases containing details of their customers poses further issues within the 1998 Act for those undertaking research surveys. These issues cover:

- Providing feedback to clients where personal data drawn when sampling from a customer database are shown at the interview stage to be inaccurate or out-of-date;

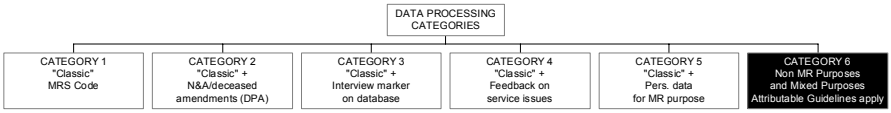
- Enabling individual complaints or dissatisfactions about customer service raised by respondents during an interview to be fed back to clients at the respondent's request;

- Enabling clients to ensure that their customers are not "over-researched";

- Providing information back to clients that can be used to update data items other than personal details.

A new categorisation of projects has therefore been introduced to help members deal with these issues, and understand where the boundaries need to be drawn between "Classic" research and projects conducted for other purposes. The following chart and accompanying notes describe the main types of data processing categories. These categories re-define the **data collection processes** used in the market research industry, and clarifies the types and extent of feedback which can or cannot be undertaken or described as confidential market research as covered by the Code of Conduct:

DATA PROCESSING CATEGORIES



The above categories are differentiated by the extent and nature of any feedback from the data collection process, and form two main groups. Firstly, Categories 1-5 cover projects which all meet the requirements within the definition of "Classic" market research. It is quite possible that a project may fit under more than one of these categories, depending on the source of the sample and the need to provide feedback of different types. The final category covers those projects that will not meet these requirements, due to some or all of the data being used for other than "Classic" research purposes. The following notes describe these categories in more detail:

Category 1: This category covers "Classic" confidential research with no feedback of any personal data unless to others **involved in that specific project**, provided they are already or have agreed to be bound by the MRS Code of Conduct and treat the data as for research purposes only (also, see Category 5, below). This would, for example, enable non-research specialists involved in a project to have access to individual respondent data.

Category 2: This applies to research projects using samples drawn from client customer databases or other third party owned lists. An obligation under the fourth Principle of the 1998 Act for the data controller is to keep the database relevant and up to date. **An agency therefore is able to and should be informing the client where an individual is found to be 'no longer at this address (but not of any new address) or has died.**

Category 3: This also applies to the use of client owned customer databases for sampling. The agency provides back to the client the names, or list of identification numbers, of all those contacted **solely** for the purpose of setting up "do not select for research" (including those who declined to be interviewed on that occasion) markers on the customer database in order to prevent over researching individual customers.

Category 4: In this case a respondent, or the client, has requested that the interviewer(s) feed back to the client details of a specific complaint or dissatisfaction for investigation. The key points are firstly that the respondent **must** have given their consent - to both the principle of this feedback taking place and the content (to ensure that it accurately describes the details); secondly that the only details provided to the client are the respondents' contact details plus a description of the complaint, and thirdly that the client can **only** use that information to deal with the issue raised and for no other purpose.

Category 5: In this case the client (probably the market research department) receives the results from the project at an individual respondent level but with the condition that the data at this personal level are **only** used for research purposes (as defined in the 1998 Act, see above, and the MRS Code). This responsibility must be part of the project contract between agency and client. This is wider than Category 1 as it could apply to anyone within the organisation, not just those in the project team. An example would be videotapes from group discussions.

Category 6: This covers all projects described under **3.1.2**, above where some or all of the data will be used by the client at a personal level for purposes **in addition to or instead** of those defined in the 1998 Act and the MRS Code as confidential research.

The exemptions described in Section 2.4, above, will not apply for Category 6 projects, and, the new right allowing data subjects to prevent the processing of data for direct marketing purposes may apply. Hence the advice that those working on Category 6 projects with a direct marketing purpose in the UK should also make themselves familiar with the DMA Code of Conduct.

A key differentiation between Category 1-5 and Category 6 is whether the data from the project is used to understand and predict rather than take direct action directed at the individuals contacted.

Within all the above Categories, client organisations have the responsibility as data controllers under the 1998 Act to ensure that any data at a personal level passed back from an agency is used solely for the purpose(s) for which the respondent gave their informed consent. Agencies also need to ensure that their clients are conforming to the 1998 Act in respect of personal data passed to an agency to be used in a project (e.g. as a sampling frame). These responsibilities should be reflected in contractual relationships between clients and agencies.

Modelling/Data Fusion Projects: Data collected from "Classic" research surveys is being increasingly used in association with other data for modelling or fusion purposes. To keep within the definition of confidential market research, members need to take particular care in these types of projects that the interests of data subjects are protected and that the data is not inadvertently used inappropriately during or after the data matching processes. Merging confidential survey data with other data at an individual personal record level does not constitute a different or additional purpose, as long as the final data set protects the identity of the data subject **(i.e. there is no breach of research confidentiality with respect to the disclosure of any respondent's personal data).**

4. USING AND MANAGING DATABASES IN MARKET RESEARCH

As mentioned under **Section 2.5** above, the BSI have published a useful general guide on the implications of the 1998 Act for those working with or managing databases. It is recommended as required reading for any MRS member who uses databases as part of their research activities - especially those who have the role of Data Controller within their organisation.

4.1 Role of Data Controllers

It is very important in the context of this section to understand a fundamental difference between the 1984 and 1998 Acts in respect of where responsibilities lie for ensuring that the provisions of the legislation are met. **The prime responsibilities are now placed with Data Controllers and not with data processors.** In the context of market research surveys, the following explains how these roles apply:

- Where an agency **rents a list or uses a sample provided by a client** in a "Classic" research survey, the agency are generally acting as data processors. Where this is the case the prime responsibility for ensuring that the Act is met in respect of the **data supplied** remains with the source organisation that continues to act as the data controller. However, if the agency **purchases** a list, or acquires any rights to it, then they are likely to be acting as a data controller for that list. It is therefore very important for agencies handling such data to satisfy themselves, preferably within any contractual arrangements, that the source organisation has appropriately registered the data through the revised notification procedures as eligible to be used for such purposes or gained the appropriate consent of the data subjects where necessary.

- However, when an agency **creates a new database which merges any of the client supplied personal data with the results of the survey**, **then the agency acts as the data controller for that combined dataset**. This will apply to any data added to the data supplied by the client that will not be supplied back to the client (e.g. respondent contact/availability data). Also, in any survey project, agencies are likely be acting as Data Controllers for the data collected during an interview (or series of interviews in the case of a panel) as long as the results remain linked to the data subjects in the sample at an individual respondent level. Therefore, agencies **must ensure that they have complied with the notification procedures under the 1998 Act and are registered as data controllers.**

- Where an agency builds its own databases for sampling purposes then the agency will also be deemed as the Data Controller for those databases.

- Where **recruiters**, or other interviewers, incorporate names of respondents issued to them for one project into a list or database for recruiting on future projects, they will become data controllers **(also see 4.3 below).** Where the sourced data will be used for Category 6 purposes, then the agency needs to ensure that the Data Controller organisation is appropriately registered for those purposes.

- Data controllers must have written contracts with processors (e.g. sub-contractors) ensuring the security of the data. This applies to individual interviewers working on the project. However, when a data controller (e.g. a client) sends personal data to another data controller (e.g. an agency) there is generally no legal obligation on the controller sending the data to ensure that the receiving controller has adequate data security arrangements in place - **but** the sending controller would be liable if they knew that the recipient organisation, or person (e.g. an interviewer or recruiter) did not have adequate security controls in place.

- There is an obligation placed on data controllers to have ensured that data subjects have consented to their data being passed to any third party acting other than as a data processor.

Clients and agencies need to ensure that their organisations have the necessary purposes notified, or the explicit consent of their customers where necessary, to meet their research needs under the six categories described in **Section 3.2**, above. Where there is any doubt, then advice should be sought from the data protection specialist within the organisation.

Finally, whenever names and addresses are sourced from a client database, respondents who ask the source of their personal details **must** be given this information at an appropriate point in the interview.

4.2 Data supplied for use as a sampling frame for "Classic" research purposes

This covers situations where the agency or organisation conducting the fieldwork and analysis is **only the processor of the data** and **not the Data Controller** for the data being used on that occasion. The data could be sourced from, for example:

- A published source (e.g. electoral roll or business directory)
- **Rented** file (e.g. from a list rental or lifestyle database company). However if the agency **buys** a list, or acquires any rights to it then they will be acting as a data controller for that list
- Names and addresses supplied to an agency for one-off use or a series of surveys (e.g. provided by a client).

Where appropriate, agencies need to ensure (preferably in writing) that the owner of the source file has included market research in their notification for the use of this data.

In addition to meeting the general points about using database sourced files, it is also essential to ensure that the file has been stripped of any individuals who have requested to the organisation defined as the data controller of that file that they do not wish to be included in research surveys.

Any feedback to database data controllers under Categories 2 or 3 should be made as quickly as possible to ensure that the database is kept up-to-date.

The data controller should also ensure that any relevant amendments made to individual records in the database are passed to the data processor (e.g. research agency) wherever practical to do so.

However, using these sources may not absolve agencies of their responsibilities as Data Controllers, as described in Section 4.1, above.

4.3 Data with respondents' names and addresses held for "Classic" research purposes only.

This covers data collected in "Classic" research surveys that are subsequently held on an identifiable basis for future use as a sampling frame for subsequent "Classic" projects (e.g. panels, re-contact surveys etc).

In this case the organisation holding the database is the data controller (e.g. the research agency).

Two additional points should be noted:

- **In all cases where a further future interview(s) with a respondent may be required, consent for the subsequent interview(s) must be gained during the initial interview and not retrospectively. If further interviews are likely to be conducted by a different organisation (e.g. another agency) then the respondents' initial consent must cover this eventuality (see the following points);**
- **If interviewers or recruiters use personal information collected or used in one project (e.g. contact details, availability etc) to build lists or databases for use in future projects, this is a separate purpose and the individuals will need to have consented to their data being held in this way. Where lists are compiled in this way, not only do the notification requirements apply, but this purpose may infringe**

any contract provisions between a list owner (e.g. the client) and the research agency restricting the use of the data. Clients and agencies need to consider this point when issuing lists for sampling purposes.

Agencies, recruiters and interviewers should ensure that they understand the responsibilities under the 1998 Act of interviewers/recruiters building or holding any databases of interviewees/respondents for recruitment purposes.

Other key points are:

- The data must only be used for purposes defined within the 1998 Act and the MRS Code as research
- The database should not be used to directly recruit/interview other members of the respondents household
- Full checks should be made to ensure that the data is not in fact owned by another data controller (e.g. a client)
- Where a database has been built as part of a syndicated research project, all members of the syndicate must have agreed to the use of any data in this way
- Data that identifies an individual must not be passed to another organisation without the **prior** consent of the individual concerned. The occasion to gain this consent is at the time of the initial interview. The data must only be used by the new data owner for the purpose for which the individual gave their consent (i.e. "Classic" research). Where the original data owner receives amendments to the personal data, this should be passed to the new owner as soon as practical
- Contact data used in a subsequent interview should always be validated with the respondent
- The data controller should record on the database each occasion an individual is either interviewed or an interview attempted/refused
- Projects under Category 6 can only be conducted from a database if the individuals have given their prior informed consent to their data being used for other, defined, purposes.

5. MARKET RESEARCH PROCESSES

The MRS Code applies to individual members only. The application of the legislation to the processes used in undertaking market research are dealt with elsewhere, for example within MRQSA.

6. ISSUES RELATING TO SPECIFIC TYPES OF RESEARCH

The following brief notes highlight key points which apply to specific types of research projects. Full details and the context are provided within the relevant MRS guidelines.

6.1 Qualitative Research

- The 1998 Act covers **all** forms of electronically held data - including audio and video records which can identify individuals.

- Recruiters should be made aware of the implications of the 1998 Act regarding the setting up of respondent databases and the need for maintaining the security of personal data, as described under Section 4.2, above.

- Informed consent must be gained at the time of recruitment before any video, audio or transcripts which identify participating individuals are released for purposes **other than** for research. These purposes and disclosures must be clearly defined to respondents. This type of project **must** be positioned as a Category 6 project.
- Any observers to group discussions **must** be made aware by the agency of their responsibilities under the 1998 Act and the MRS Code to ensure that personal information remains confidential.

- Respondents must be told before the group discussion commences about the use and purpose of any audio or video recordings being made plus the presence of any observers - and gain respondents consent to taking part under those conditions.

6.2 Observation Research

Members need to be familiar with the CCTV Code of Practice issued by the Information Commissioner in July 2000 if they are using CCTV for market research purposes. All members collecting data in this way must be registered as data controllers. The MRS will be issuing a detailed guideline covering *observation techniques* in the near future. However, some of the points above covering the observation of group discussions (Section 8.1) will apply.

Where any observation techniques record staff then they must be informed that their organisation is subject to, or intends to use, observational research methods.

6.3 Researching Children

Children have the same rights as adults within the 1998 Act.

6.4 Business to Business Research

Whilst the 1998 Act does not apply to data held about corporate or other types of organisation, care should be taken to ensure that when undertaking “business to business” research the 1998 Act is not infringed when collecting/holding data about **individuals** working within organisations. This particularly applies when interviewing individuals who are registered as sole traders or within partnerships.

6.5 Internet Research

The same principles apply to this data collection and survey management method. ESOMAR has produced a detailed guideline covering use of the internet and the MRS will produce a version in the near future. However, it is recognised that this is a rapidly evolving area of research with global implications. One important point is that e mail addresses count as personal data where they refer to a data subject, as defined by the 1998 Act, and need to be protected in the same way as other identifiers.

6.6 Data Collection

The identity of the organisation undertaking the collection of the data (e.g. the agency) must be disclosed to the respondent at an appropriate point in the interview.

6.7 Mystery Shopping

Staff must be informed that their organisation is subject to, or intends to undertake, mystery shopping research.

7. DATA PROTECTION AND INTERNATIONAL RESEARCH AND THE CROSS-BORDER TRANSFER OF DATA

7.1 EEA National Laws

The EU Directive instructs that data controllers should comply with the law of the EU state in which the controller is located and in which processing is carried out. When the controller is responsible for and/or located in several EU countries then he/she must ensure that they comply with the laws of all member states in which data processing taking place.

7.2 Outside the EEA

It is difficult to provide precise information about the position in countries outside the EAA. However, compared to the 1984 Act, the EU Data Protection Directive requires member states to introduce far more rigorous controls over the transfer of personal data (see the eighth Principle in Section 2.1, above). Under the 1998 Act, "transfer" covers the access to personal data held in the UK from countries outside the EEA. This includes electronic access possible through a computer network between companies in an international group; access to data held in the UK via a lap-top by a UK based manager whilst travelling outside the EEA (but only if adequate security arrangements are **not** in place to prevent unauthorised access by others in that country); placing personal data on a web site; faxing or using the telephone to pass personal data from the UK which will be then entered into a computer.

Whilst the EEA covers member states plus Iceland, Norway and Liechtenstein - the Channel Islands and the Isle of Man are **outside** the EEA. However, some countries may be considered to have "adequate" levels of legal protection for personal data - these are published on the UK Information Commissioners web site: *www.dataprotection.gov.uk.*

There may also be situations where contractual obligations create an adequate level of security to permit transfer, and there are other exemptions covering:

- unambiguous consent of the data subject;
- performance of a contract between the data subject and a data controller, or a contract concluded in the interest of the data subject;
- transfers legally required on public interest grounds or for the establishment, exercise or defence of legal claims;
- transfers needed to protect the vital interests of the data subject;

- transfers from a register which has been established under laws or regulations as being open to consultation by the general public or anyone demonstrating a legitimate interest.

The BSI guideline contains more detailed information within Chapter 7.

The MRS will also shortly issue details of key contacts in EEA countries who can provide information on how the implementation of the EU Data Protection Directive affects survey research within that specific country. The MRS also hold a list of data protection commissioners around the world.

8. COMMON QUESTIONS ON DATA PROTECTION

8.1 General Issues

Q1: Does my organisation need to have someone who has the title "Data Protection Officer"?

The important issue is that there should be one individual who is responsible for data protection (ensuring that the organisations 'responsibilities as a data controller are met), possibly as part of more general responsibilities covering data security, and that everyone within the organisation knows who this individual is and where queries on the legislation or subject access requests should be sent.

Q2: Does the act cover data collected by such methods as CCTV cameras, audio & videotapes, photograph files?

All of these are covered by the 1998 Act if they can be used to identify living individuals.

Q3: I conduct "business to business" research. Is data on organisations or their employees covered by the 1998 Act in the context of market research?

In terms of organisations only data held about sole traders or a partnership is covered by the legislation. However, if during a survey, personal information is held about an employee, then this may well be covered by the Act. This would also apply to databases/sampling frames that contain details of individuals. BSI advise that it is best to assume all business to business databases are covered by the 1998 Act.

Q4: What does the term "explicit consent" mean in the context of the 1998 Act?

The Act says that this form of consent is one of the possible conditions required for processing sensitive data. Whilst the Act does not define explicit consent, the Commissioner advises that consent should be "absolutely clear" and require a positive action by the data subject. For "Classic" research projects this means ensuring at the commencement of the interview that the respondent clearly understands before they give their consent to be interviewed that firstly, the information they provide will only be used for research purposes and secondly that they have the right to withdraw from the interview at any time.

Q5: What is a data controller?

The Act states that an organisation can be defined as a data controller "the person (usually a legal person but could be a living individual in the case of a sole trader or partnership business) who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be processed". Each separate legal entity is treated as a data controller within the Act, but not every legal entity becomes a data controller. Data controllers must have a written contract with a processor ensuring the security of

the data passed to it by the controller. **Section 4.1, above, describes in detail how the role of Data Controller applies in the context of survey research.**

8.2 Issues specific to Survey Research

Q6: Is it acceptable to meet a clients' request for extra information about respondents for non-research purposes, to be collected at the end of the interview and pass this back to the client to add to their customer database?

This would be unacceptable under the MRS Code of Conduct. The whole project would need to be undertaken as a Category 6 project and not positioned as "classic" market research. Respondents would also need to have consented to this additional purpose and have the opportunity to opt-out.

Q7: Following a review by the client, agency A has lost a contract to run a continuous panel to agency B. How should panellists be made aware of this change?

Agency A will need to contact each respondent to inform them of this change and get their consent to continue to be a panel member with Agency B. In cases where respondents do not reply, then these individuals should also be removed from the panel as it cannot be assumed by not replying that they have given their consent to continue as panel members.

Q8: A client has requested details of respondent's names and address details to use for profiling purposes. Can this request be met?

If the information is passed back (e.g. to an in-house a market research department) for use **solely** for research purposes, then this would be acceptable under Category 5. However, if used for non-research purposes, then this would be unacceptable except in Category 6 projects. It would be acceptable if the data were provided in a form that did not enable individuals to be identified. Also, the use must reflect the purpose for which consent was gained in the original interview.

Q9: Before using a sample provided by a client should this be screened against either the Telephone or Mail Preference databases?

This is not necessary for projects conducted under Categories 1-5, as "classic" market research is exempt from provisions covering direct marketing. However, this is necessary for Category 6 projects when data is collected for direct marketing purposes.

Q10: A number of group discussions on customer service were conducted by an agency in viewing facilities and the client has now requested copies of the video tapes to use for internal training purposes. Can this request be met?

Tapes cannot normally be given to a client, except where they will be used solely for research purposes. For any other purpose, respondents must firstly be told about this purpose at the time of the groups, and secondly, **all** those in a group must at that time have given their consent to that particular tape being used in this way. In this particular case the project would have to be positioned as Category 6 as the data would be being used for purposes in addition to market research. It would therefore be necessary to conduct a further group specifically for non-research training purposes.

Q11: A client has asked for feedback from a customer satisfaction survey in two ways. Firstly, they want the names and addresses of all those interviewed, or who refused to be interviewed, so they can mark the database to prevent over researching of their customers; secondly they want to be able to follow-up instances where the service was deemed by the respondent to have been unsatisfactory.

The first request can be met under the rules for “classic” research provided that the client undertakes to use the information solely for that purpose. This would be a Category 3 project. The second request can only be met under “classic” research rules in cases where the respondent himself has consented to the information about a service experience being passed back to the client specifically for the purpose of enabling the case to be investigated, **and,** this feedback is separate from the data collected in the survey.

Q12: A client is part of an international group with the parent company located in the USA. They have recently commissioned group discussions where the respondents agreed to the client market research department having access to the videotapes for research purposes only. The US parent company has now asked for copies of the tapes to be sent to them. Can this request be met?

The US currently has inadequate data protection legislation but there is ‘Safe Harbour’ agreement which has been drawn up by the US and EU. US companies registered with this agreement make a commitment to meet EU data protection standards and therefore can receive data. Alternatively a standard data transfer contract can be used - details of which can be found on the EU website at www.europa.eu/comm/internal_market/en/datprot/news/index.htm

Q13: In order to test out a proposed new on-line shopping service, the names, addresses, telephone numbers, e mail addresses and customer ID numbers of respondents to a survey about this service need to be provided to the client and the third party organising the fulfilment of this service to enable products ordered in the trial to be delivered. Can these details be provided?

For the survey to remain as a “classic” research project, then three requirements must be met. Firstly, respondents in the survey must have consented to their personal details being used for this purpose when they were recruited; secondly, the client and the third party must be able to guarantee that this personal data is only used for the purpose of fulfilling orders and used during the trial period only; the survey itself must meet the requirements of the MRS Code of Conduct.

Q14: A client has asked an agency conducting a survey on their behalf using a client supplied database extract as a sampling frame if it will feedback updates of wrong names, addresses, telephone numbers and any other amendments. The agency is concerned about the legality of using a market research survey opportunity to help clean-up a client database.

Whilst database cleaning is not compatible with “classic” market research, the agency has an obligation under the 1998 Act to provide certain amendments to the data controller for the database extract (i.e. the client) - limited to feedback on instances where the named person was either no longer living at the address given or had died (Category 2 project).

Q15: A brief received by an agency for a customer satisfaction project includes the requirement for the identity of respondents to be provided to the client plus data from the survey for use in non-market research purposes such as direct marketing.

This would need to be positioned as a Category 6 project. However, to meet the requirements of the 1998 Act the client would need to provide the agency with very specific details of the purposes for which the data would be used, and respondents would have to consent to their personal data being used for these purposes. The client, as a data controller, would also be responsible for ensuring that the data is only used for those defined purposes.

Q16: An agency has recommended in a proposal to a client that the most appropriate sampling frame would be the client customer database. The client is concerned about the position under the 1998 Act.

The client needs to ensure that their notification (registration) to the Information Commissioner concerning the use of the data covers market research purposes (see Appendix 1). If this not the case then the notification will need to be amended. If the client's notification includes market research their data protection responsibilities will have been met and the data can be passed to the researcher for sampling.

Q17: Does a market research agency need to register its survey research activities with the data protection office.

Whilst it is now not necessary for data processing bureaux to register their data activities if all they do is process data owned by their clients, it is unlikely that a market research agency could claim this exemption for three key reasons.

- Firstly, most survey projects involve creating a dataset that contains personal identifiers (including video and audio tapes) - even if these get removed during later stages of the processing.

- Secondly, any database created for sampling purposes or sample administration purposes would fall within the 1998 Act.

- Finally, even when the client supplies a database for sampling purposes, it is likely that a version will be created by the agency with data appended to the records for agency use only.

In all three of these cases the agency will be classed as having data controller responsibilities and therefore need to notify their activities to the Information Commissioner. The BSI also recommend that any business to business database should be registered, even though data on legal entities are exempt under the act (see the reply to Q3 for full details of the issues affecting business to business research).

Q18: I'm conducting a survey on housing design. To help interpret the findings and produce a meaningful report for the client I need to share information at a data subject level from the interviews with an architect who is part of the project team. Is this possible?

This type of relationship between the research agency and a specialist in a particular field is not an uncommon requirement in certain projects. If any data that could identify the respondent can be removed before the information is passed to the architect, then there would be no problem. However, if this is either not feasible, or the identification data is essential to understanding the issues, then to ensure that this remains as a Category 1 project, the architect would need to have agreed in writing to be fully bound by the MRS Code.

Q19: Can key- hole cameras or other clandestine observation methods be used in market research?

Recorded observation of individuals, whether audio or visual, is permitted but under strict conditions: where the individuals are aware of it and what the data will be used for; monitoring is not excessive; does not infringe on the individuals right for privacy etc. So, for example in group discussions, respondents must be made aware if audio/video recording for research purposes is to take place and have given their consent. Use of CCTV equipment in public places to monitor everyone, shops etc is a different issue - but there are usually signs advising that monitoring is taking place and members of the public are therefore assumed to have given their tacit consent to be viewed.

Q20: Can a loyalty card database be used for sampling purposes where cardholders have given their permission for the data to be used for marketing purposes but with no specific mention of market research.

If cardholders have given this permission then there is no problem in using the details for Category 1-5 market research, as long as this is a notified use of the database. Opt out/in conditions do not apply to market research use, unless this has been stated as a specific purpose.

Q21: A sample provided by a client from their customer database was found to be full of errors when contact was attempted with individuals. Can I provide the amended information back to the client?

All you can do is notify to the client instances where the customer was no longer at an address or had died. This is catered for under Category 2 projects. The best course of action is to discuss the general issues with the client as in their capacity as data controller of the database they are probably breaching the fourth principle of the 1998 Act (keeping personal data accurate and up to date).

Q22: Is it true that customer satisfaction surveys need to be treated as if they are direct marketing activities?

No - the same rules apply to these types of project as to any other research survey. It will depend on the purpose(s) of the project and the degree of feedback to the client.

Q23: Is it possible for qualitative research agencies to share information on respondents in order to build samples for recruitment?

Normally, respondents are only recruited for a specific research project and have thereby only consented for their personal data to be used for research purposes. What is described in the question would be an additional, non-research, purpose. Using personal information in this way would only be possible if respondents had consented to this use of their data when initially recruited, and, been given the opportunity to opt-out of this particular purpose.

Q24: Agency A has been bought by Agency B. Agency B now want to combine the personal data held by Agency A for running a panel of adults with their own access panel and use these additional respondents for generating future samples for other surveys. Does this have any data protection implications?

Agency B will need to contact each person on Agency A's panel and ask their permission to use their data as part of the access panel. Only those who give their consent can be used. Non response cannot be treated as implied consent.

9. MRS CODELINE AND THE STANDARDS DEPARTMENT

The MRS provides two services to members who have queries about Code of Conduct issues or legislation that affects survey research:

- General queries on the Code can be handled by the Codeline panel who can be contacted via the Standards department at the MRS on **020 7490 4911 or** codeline@mrs.org.uk

- Specific queries about the 1998 Act should be referred **directly** to the Standards department at the MRS on **020 7490 4911 or** codeline@mrs.org.uk

APPENDIX 1

DATA PROTECTION NOTIFICATION PROCEDURES

INTRODUCTION

In preparing this document the following guidelines were used,

- **Notification Handbook - A Complete Guide to Notification** published by the Office of the Information Commissioner (OIC). To obtain a copy visit the OIC website on www.dataprotection.gov.uk

- **Data Protection - Guide to the Practical Implementation of the Data Protection Act 1998 (DISC PD 0012-1:2000)** published by the British Standards Institute. To subscribe to this publication visit the BSI website on www.bsi.org.uk

The contents of this guideline summarise the main points regarding notification within the Data Protection Act 1998. For more detailed guidance please refer to the OIC.

NOTIFICATION - WHAT IS IT?

Notification is the new term **replacing Registration,** for the process of informing the Information Commissioner of processing which is being conducted. Notification is a statutory requirement and replaces the previous responsibility for registration under the Data Protection Act 1984.

All organisations that process data must adhere to the Data Protection Act 1998 even if exempt from some or all of the data protection principles. Failing to notify activities to the OIC will not exclude individuals and organisations from adhering to the requirements of the Act.

Market researchers are not exempt from notification.

How to Notify

Organisations must notify with the OIC once a year. Notification currently costs £35 a year. To notify two forms (Part 1 and 2) must be completed and these ensure that general descriptions of the data held, the purposes and the recipients of the data are detailed for your organisation.

Notification must be completed directly with the OIC and this can be done by either printing off the notification forms from the OIC website or by contacting the Notification helpline to request the forms.

The Notification Forms

Detailed below is a guide on the forms and the kinds of information that will need to be detailed.

PART 1

Data controller - This should be the legal title of the individual or organisation. For example,

- Sole Trader - the full name of the individual e.g. Jane Catherine Doe
- Partnerships - the trading name of the partnership e.g. Doe & Co

- Limited or public limited companies - the full name of the company e.g. Doe Ltd
- Group of companies - these can not submit a single notification. Each data controller (each of the individual companies) must notify separately

Data controller address - For limited companies this is the registered address. For the remainder it should be the principal business address where the OIC can contact you.

Company registration number - The completion of this is optional.

Contact details - This does not appear on the public register but must be completed to allow the OIC to contact you.

A description of the processing of personal data - This is a general overview of the type of processing which is being conducted by your organisation.

For each purpose for processing you need to complete the following details,

PURPOSE: Most organisations will be processing data for a number of purposes and therefore each of these would need to be detailed with the data subjects, classes, recipients and transfers detailed for each. A list of standard purposes and descriptions are provided. Whenever possible this should be used.

DATA SUBJECTS: These are the individuals about whom the personal data is held. A standard list is provided and this must be used.

DATA CLASSES: This is the type of personal data which is held about the data subjects. A standard list is provided and this must be used. It should be noted that within this list is all the 'sensitive' personal data classes. Most research agencies would be collected some if not all of these classes and this must be included on the notification form.

RECIPIENTS: These are the individuals to whom the data may be supplied. A standard list is provided and this must be used.

TRANSFER OF DATA: Within the Data Protection Act 1998 there are specific conditions which relate to data transfers outside of the European Economic Area (the EEA is all the countries in the EU plus Iceland, Liechtenstein and Norway). Therefore on the form you need to classify for each purpose whether the data is transferred world wide or only within the EEA.

Remember when you are completing this section that it will need to include not only details relating to your business e.g. research but also the details relating to the running of your organisation such as staff administration.

Once you have submitted details of the purposes you can add further purposes if the activities of your organisation expand during the notification year. This can be done by completing the purpose forms which are available on the OIC website.

PART 2

Trading name - If trading under a different name from the formal legal title. This is for data subjects who may want to obtain details of the information held by you but are unaware of your organisation's full title.

Representative details - This is for data controllers who are not established in the UK or the EEA but are using equipment for data processing in the UK e.g. overseas market research organisations which have a CATI unit in the UK.

Security statement - A series of questions are asked regarding the measures you have in place to ensure that data is kept secure. These details are not shown on the public register.

Statement of exempt processing - There are a number of activities which are exempt from processing and this section is to make the OIC aware that not all your organisation's activities have been registered.

Voluntary notification - Organisations that are exempt from notification can do so voluntarily. The vast majority of market research organisations must notify so this would not apply.

If you were registered under the 1984 Act - This is for data controllers who may have had more than one registration under the previous 1984 registration regime. By completing this it will ensure that out of date entries will be removed**.**

Schools in England, Wales and Northern Ireland (Headteachers and Governing Bodies) who were registered under the 1984 Act - This is only applicable to schools.

Fees - Payment options for the £35 notification fee.

Declaration - This must be signed and dated.

FREQUENTLY ASKED QUESTIONS ON NOTIFICATION

1 What are the major changes between the registration requirements of the 1984 Act and the notification requirements in the 1998 Act?

- Definitions have changed
- More responsibility is placed upon data controllers than data processors
- The detailed coding system has been abandoned
- Descriptions given in the register are more general
- Only one register entry per data controller

2. How do I decide what details need to be included in the notification?

It is important to get all your organisation's activities covered within your notification. The following action plan would help you with this,

- Allocate an individual within your organisation to take responsibility for your data protection responsibilities. Ideally this individual should have a degree of seniority to ensure full co-operation within your organisation.

- Conduct an internal audit of every list held within your organisation - this should include paper files, video/audio files, microfiche as well as computer files.

- Set up an internal system to ensure that any new additions are recorded and reported to the individual responsible for the data protection policy

- Produce a Data Protection Policy for your organisation

- Ensure that all those who complete work for your organisation are familiar with the data policy and agree to adhere to the principles.

- Conduct a yearly audit to ensure that the Data Protection Policy is being fully applied

Once you have completed the initial audit you will then have sufficient information to accurately complete the notification form. The subsequent checks and audits will ensure that if any changes

occur during the notification year you can update your entry immediately (an out of date entry is a criminal offence) and for subsequent years notification should then be a straightforward administrative task.

2. Is my organisation a data controller or a data processor?

By conducting a data protection audit you will be able to identify data sources within your organisation. Then you need to assess how much 'control' you have over the use of the data. Did your organisation gather the data? Was the data gathered for a third party? Do you intend to retain some or all of the data? How will the data be used in future?

3. Do I need to notify manual data?

If manual data is all you hold you do not have to notify this with the OIC. However you can voluntarily notify.

4. I only keep a small database of individuals names and addresses do I need to notify?

Yes, the size of the database is not important. If you hold personal data you must notify.

5. Aside from the details about personal data does notification require any further information to be detailed?

Aside from administrative details for your organisation, notification also requires you to give a general description of the security measures you have in place to protect the personal data. This is done through a series of questions. Again if you have no security measures in place you should add this to your action plan. The OIC recommends that you follow British Standards BS7799 to ensure security best practice. Information on this standard is available from the BSI (www.bsi.org.uk)

7. Will the notification be publicly available?

The register is available for inspection and can be found on the internet at www.dpr.gov.uk

8. My organisation was registered under the old system what should I do next?

Your organisation does not need to notify until the old 'registration' expires. When the renewal is due you will be sent a pre-completed form with all your information automatically transferred to the new coding system. You will need to check that this is correct, add and delete any changes and then send it back with the notification fee.

9. Why do I need to include details about the transfer of data on the notification form?

The new eighth principle places restrictions on transferring data to countries without 'adequate' data protection. On the forms you need to detail whether data is transferred outside the European Economic Area (the EU plus Norway, Iceland and Liechtenstein). If you are concerned that you are transferring data to an area without sufficient data protection you should visit the OIC website (www.dataprotection.gov.uk) which contains more details.

APPENDIX 2

1998 Act: Schedules 2 & 3

Schedule 2 contains the general conditions, one of which must be met when processing personal data. These can be summarised as follows:

- The data subject must have consented to the processing
- The processing is a part of a contract with the data subject
- The processing is necessary for the processor to meet a legal requirement
- The processing is to protect the interests of the data subject
- The processing is to meet judicial needs, those of the Crown/government or the exercise of a public function in the public interest
- The processing is necessary for the purposes of legitimate interests pursued by the processor unless it would prejudice the interests of the data subject.

In the case of market research, the first condition is the one that is most likely to apply. This consent will normally have been gained through the respondent having agreed to be interviewed for the defined purpose of research. However, where a client database is being used then the client must have specified market research as a purpose in their Notification. Where a re-interview is planned, consent to this must have been gained at the time of the first interview.

Schedule 3 describes the special conditions, one of which must be met when processing sensitive data. These can be summarised as follows:

- The explicit consent must have been given by the data subject sign **(positive consent)**
- The processing is necessary to meet employment law
- If the vital interests of the data subject are to be protected
- The processing is part of a legitimate activity of a non profit making organisation which: exists for political, philosophical, religious or trade union purposes; processes data in such a way that safeguards the rights and freedoms of data subjects who are members; does not disclose personal data without the consent of the data subject
- The information has been made public by the data subject
- Processing the data for certain legal reasons as defined by the Secretary of State; for the administration of justice; required by the Crown/government
- The processing is necessary for medical purposes and conducted by a medical professional
- Processing data for equal opportunities purposes.

As in the case of Schedule 2, the first condition is the one most likely to apply to market research. Whilst there is no specific distinction between Informed and Explicit consent when applied to "Classic" research, care must be taken in any survey situation to ensure at the beginning of the interview that the respondent fully understands firstly, the purpose for which the data is being collected and secondly, their right to withdraw this consent at any point in the interview.

APPENDIX 3

Useful contacts

1. The Standards Department & Codeline Service
   The Market Research Society
   15 Northburgh Street
   London
   EC1V 0JR

   Tel: 020 7566 1823 (Codeline)
   Tel: 020 7566 1831 (Standards department)
   Fax: 020 7566 1829
   Web: www.mrs.org.uk
   Email: standards@mrs.org.uk

2. Office of the Information Commissioner
   Wycliffe House
   Water Lane
   Wilmslow
   Cheshire
   SK9 5AF

   Tel: 01625 545745 (information)
   Fax: 01625 524510
   Web: www.dataprotection.gov.uk

3. British Standards Institute
   389 Chiswick High Road
   London
   W4 4AL

   Tel: 020 8996 9000
   Fax: 020 8996 7400
   Web: www.bsi-global.com

4. ESOMAR
   Vondelstraat 172
   1054 GV Amsterdam
   The Netherlands

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