

The UK 1998 Data Protection Act

Data Protection legislation was first introduced into the UK under the 1984 Data Protection Act. The Market Research Society (MRS) was actively engaged in the consultation phase of this legislation and again during the late 1980's. During all these discussions, the MRS was successful in ensuring that market research enjoyed exemption under the research heading within the 1984 Act by citing the consumer protection provisions which are at the core of the MRS Code of Conduct. In the mid 1990's, the MRS published guidelines to reflect the growing importance of databases in market research, and it also established a Codeline telephone service to handle members queries on Code issues.

Although the EU Data Protection Directive provided an overview of the new European wide approach to data privacy, the impact in the UK could not be fully identified until the details of the 1998 Data Protection Act were finally published. A small team representing the UK market research industry met with the UK Information Commissioners' representatives in September 2000 to identify particular issues within the new legislation which needed to be taken into account. This meeting also identified some concerns of the Information Commissioner about the nature and purpose of measuring attitudes towards customer service.



Thereafter the MRS has produced two papers. Firstly, a paper to address the concerns about customer satisfaction research, and secondly, a new comprehensive guideline for members covering the impact of the 1998 Act on survey research. These have both been written under the auspices of the MRS Professional Standards Committee and discussed with the Information Commissioners representative at a meeting in early May. No significant points were raised by the Commissioner, apart from the problem that the professional and trade bodies all face – how to deal with non members undertaking various forms of survey research which do not always meet the requirements of any of the existing codes.

The MRS will publish the new Data Protection guideline as quickly as possible, and, develop specific guidelines to cover customer satisfaction research.

The key issue is to develop a clearer understanding of the boundaries between what we describe as “classic” (confidential) market research and other types of collection of personal data (eg for database marketing purposes). In particular, the need to understand the importance within the 1998 Act of informed consent and transparency when applied to the survey research process. To help this understanding, we have developed a five step categorisation of research data collection projects, which detail the types of feedback to clients which are permissible, and necessary, to meet both the requirements and spirit of the legislation, whilst still keeping within the boundaries of the MRS Code.

The other main points which the new guideline covers are:

- Describing the scope of the new research exemption within the 1998 Act;
- Describing the new term Data Controller, how this applies to market research and when to register (now notification) activities with the Commissioners office – clients and agencies;
- Emphasising that the legislation applies to all forms of market research. For example, recruiters databases of potential respondents; video/audio tapes of group discussions; observation – at groups by clients and using this as a data collection method;
- Explaining why it is now necessary to ensure that respondents are asked at the initial interview for their consent to be re-interviewed at a future date;
- Ensuring that both agencies and clients understand their responsibilities especially when customer databases are used as a sampling frame;
- Explaining why careful thought needs to be given as to when data is de-personalised as the Act only covers personal data;
- Describing the situations when it is likely that business to business research falls under the Act;
- Detailing the new notification procedures which have replaced the previous registration process;
- The impact on transfer of data to other countries – inside and outside the EU. ■

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Revised Notes to the ICC/ESOMAR International Code of Practice

ESOMAR's Professional Standards Committee has revised the Notes to the ICC/ESOMAR Code and related documents to take into account data protection legislation within the EU and other developments. ESOMAR has consulted other associations around the world, as well as a number of international research companies and these documents will be sent to members shortly and posted on ESOMAR's website www.esomar.nl.

Whilst the ICC/ESOMAR Code and Notes are designed to establish a certain level of harmonisation, researchers are also advised to contact relevant national market research associations for further advice (contact details also on ESOMAR's website) regarding particular requirements for those countries in which they plan to carry out research.