

**EXPLANATORY MEMORANDUM TO
THE DATA PROTECTION (PROCESSING OF SENSITIVE PERSONAL
DATA) ORDER 2006**

2006 No. XXXX

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 The order will enable a payment card issuer to process sensitive personal data provided by law enforcement authorities about people convicted or cautioned (including conditional cautions as well as reprimands and warnings for youth) for crimes relating to child abuse images where a payment card has been used to commit the offence.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None.

4. **Legislative background**

- 4.1 The card issuers have the power, based on their contracts with cardholders, to remove any payment card and to cancel any account that has been used to make an illegal purchase. However, without the conviction or caution details and the ability to process this data, card issuers are not able to exercise these contractual rights.
- 4.2 Sensitive personal data may only be processed if one of the Conditions in Schedule 3 DPA is met.
- 4.3 It is open to the Secretary of State to make an Order specifying particular circumstances where sensitive personal data may be processed.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 It is the view of the Parliamentary Under-Secretary of State, Baroness Catherine Ashton of Upholland, that the provisions of the Order are compatible with Convention rights.

6.2 While Article 8 ECHR (right to privacy) is engaged, it is not breached as Article 8(2) ECHR permits the state to interfere with an individual's privacy rights where it is necessary for the prevention or crime or the protection of others and it is proportionate to do so. These conditions are met in this context.

7. Policy Background

7.1 Government, law enforcement authorities and the Association for Payment Clearing Services (APACS), which is the UK trade association for payments and for those institutions who deliver payment services to customers, are keen to prevent the re-use of payments cards in relation to indecent images of children. We hope to reduce re-offending by adding a new Condition to those in Schedule 3 of the Data Protection Act 1998 to ensure that card issuers can process details of individuals convicted of, or cautioned for, crimes relating to child abuse images and so can cancel the payment card used in the offence. This Order will enable card issuers to process this data without the explicit consent of the data subject.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this order as it has negligible impact on business and public bodies.

9. Contact

9.1 Rajee Balasubramaniam, Information Rights Division, Department for Constitutional Affairs, can answer any queries relating to the Order on 020 7210 8038.