

# Briefing Note

## THE DATA PROTECTION BILL

### Background

With the large increase in the number and use of computers over the last decade, the issue of protection of personal information has become one of some importance. Although, of course, information about individuals has always been collected, the nature of computers means that such information can now be far more extensive, and the speed with which it can be produced or transferred has given rise to concern that it can be misused. There is a growing feeling that protection of the privacy of the individual is necessary. The report of the Younger Committee in 1972 established a series of 'data protection' principles to apply to the handling of information. This was further augmented by the Report of the Lindop Committee in 1978, which was an extensive analysis of the problems of operating a satisfactory scheme of privacy safeguards. The Report proposed legislation based upon the principles established by the Younger Committee, and formed the background to the legislation put forward in the Data Protection Bill — though certain recommendations put forward by the Lindop Committee were not accepted by the Government; for example, the proposal of a multi-member Data Protection Authority to enforce legislation was rejected in favour of an individual Registrar.

### The European Position

The 1981 European Convention for 'the Protection of Individuals with regard to the Automatic Processing of Personal Data' has been signed by the UK. In order to ratify this, legislation is necessary to establish the standards set out in the Convention. This is of great importance to companies who transfer information across international boundaries; without legislation in the UK, it is quite possible for other countries to refuse to allow transfers of information here, which would result in those companies moving abroad.

In order to be able to ratify the Convention, and in the light of the Younger and Lindop Reports, the Government has brought forward the Data Protection Bill, which, having passed through the Lords, is now at Committee stage in the House of Commons.

### The Bill's Proposals

The Bill sets out eight principles and their interpretation:

- \* Information contained in personal data shall be obtained, and the data processed, both fairly and lawfully.
- \* Personal data can only be held for lawful reasons which must be specified at the time that the collector registers as a data user.
- \* Personal data held for a purpose must not be used or disclosed in a way that is not compatible with that purpose.
- \* Personal data should be adequate, relevant and not excessive in relation to the purpose for which it is held.
- \* Personal data must be accurate and kept up to date.
- \* Personal data should not be held longer than is necessary for its original purpose.
- \* Individuals shall be entitled to find out whether data about them is being held, to be able to examine it, and where appropriate, to have the data corrected or erased.
- \* Appropriate security measures will be taken when data is altered, disclosed or destroyed in an unauthorized manner, or when there is unauthorized access to it; and similar measures will apply to accidental loss or destruction of personal data.

## The Registrar

All data users (with some exceptions – see below) will have to register with an official Registrar. They will have to provide the following details:

- \* A description of the data they hold and the purpose for which it is held or used.
- \* A description of the source of the data.
- \* A description of anyone to whom the data may be disclosed.
- \* The names of any countries outside the U.K. to which the data may be transferred.
- \* The name and address of the person responsible for dealing with requests from data subjects for access to data.

The Registrar will have to maintain the register, and ensure that those registered operate in accordance with the principles. To perform this, he will have two key powers; he will be able to serve notices on users to change their procedures to bring them into compliance with the principles, and he will be able to strike users off the register. It will be an offence to operate unregistered or in contravention of the registered details. In addition, in circumstances where data is being, or will eventually be, transferred to another country not bound by the European Convention, the Registrar may prohibit the transfer.

## The Data Protection Tribunal

Data users may appeal against the Registrar's decisions to a specially constituted Tribunal, which will have a legally qualified chairman. The Government preferred a Registrar to a Data Protection Authority. Working with a staff of 20, a single Registrar will be a better economic use of resources. Moreover, as the Home Secretary, **Mr William Whitelaw**, said: 'We believe that an individual Registrar will be able to act more rapidly, authoritatively and consistently in this complex and infinitely varied field than could a committee' (*Hansard*, 11th April 1983, Col. 557).

The Bill sets out the procedures by which individuals can obtain details of personal data held about them, and will enable them to seek compensation in the courts for damage suffered as a result of inaccuracy or loss, or unauthorized destruction or disclosure of data.

## Exemptions from the Bill

There are two categories of exemption – total and partial. Data held for National Security reasons will be totally exempt, as will data held for purely domestic purposes. All other data will be registered, with partial exemptions from requirements of the Bill in special cases, which include:

- \* If applying the principles of the Bill would be prejudicial to the prevention and detection of crime, or the assessment or collection of tax. This is specifically covered by Article 9 of the European Convention;
- \* Certain health and social work data – for example, in the case of a patient suffering from a terminal illness; it should be possible for him to be told by a doctor rather than discovering himself by examination of personal data;
- \* Data held by Government departments relating to judicial appointments;
- \* Statistical and research data, providing that the results, when available, do not identify the data subjects.

The Home Secretary has summed up these provisions, saying: 'I want to emphasise that these clauses have been constructed from the starting point ... that exemptions from the scheme would be kept to a minimum' (*Hansard*, 11th April 1983, Col. 559). **Mr David Waddington**, Minister of State at the Home Office, clarified the issue of exemptions further: 'The exemptions certainly do not give the police or any other body any new powers' (*Hansard*, 11th April 1983, Col. 626) and went on to add: 'There is nothing in the Bill to oblige anyone to disclose medical records. The Bill does not alter the law in any way against the interests of doctors' (*ibid.*, Col. 627).

**Government Departments and Police Forces** will be subject to the same obligations under the Bill as a private person, but will not be liable to prosecution. In some instances, however, it will be possible to take proceedings against individuals in public service if, in the course of their duty, they breach the Data Protection principles.