

AMENDMENTS TO IRISH BILL CLARIFY DATA OWNERS' RESPONSIBILITIES

The Irish Minister for Justice, Gerard Collins, has proposed several amendments to the Data Protection Bill (PL&B November '87 p.6) before the bill is reviewed in the Dail's committee stage, expected in the next few weeks (see page 8). The most important amendments are described here.

1. The Minister's power to safeguard sensitive personal data

This amendment to section 2 (6) gives the Minister power to draw up regulations giving additional safeguards "in relation to personal data as to racial origin, political opinions, religious or other beliefs, physical or mental health, sexual life or criminal convictions." These safeguards could involve higher than normal standards, for example, of fair collection, accuracy, adequacy, relevance, storage, or security. The Justice Minister would have the duty to consult any other relevant minister, and both houses of the legislature would have to approve the text of the regulations.

2. An exemption from registration for health data used for employee records

Under an amendment to section 16 (1) (d), data controllers will not now be required to register only because they keep personal health data where it is reasonably kept "in the ordinary course of personnel administration and (is) not used or disclosed for any other purpose." The rationale for this amendment is that as most organizations keep at least some health data on their employees, the Minister for Justice does not wish to make the keeping of computerized health records the reason for shifting Irish data protection registration from a selective to a universal system.

3. Extension of compliance periods

The period for complying with an access request, under section 4, is being amended from one month to 40 days in most cases.

4. Access fee not returned for minor modification of a data record

The original bill, section 4 (1) (c) (ii) stated that a fee paid by an individual for access to a record on him shall be returned to him "if his request is not complied with or the data controller corrects or supplements, or erases all or part of, the data concerned." But the amendment introduces a stricter qualification for a refund whereby the correction or supplement to the record must lead to it being "materially" modified before an individual could have his fee returned. Any dispute over whether a modification is material would be resolved by the Data Protection Commissioner.

5. Duty to notify parties to whom data is transferred only for major modifications to data

The original bill, section 6 (2) (b), required a data controller to notify any party to whom he had transferred data in the past 12 months of any modification, erasure, or supplement made as a result of a request by a data subject. The amendment limits this duty of notification to cases where "such compliance materially modifies the data concerned." The same amendment is

being made to section 10 (7) when a data controller is required to rectify or erase a record by an enforcement notice of the Data Protection Commissioner.

6. Powers of entry and inspection to a financial institution to be approved by the High Court

In the original bill, section 23 (2), written authorization by the Commissioner is required for an authorized officer to enter and inspect premises, data or equipment and seek information from any person there or use related powers if these actions are "necessary or expedient" to enable the Commissioner to perform his enforcement function. But the amendment states that if the Commissioner considers that such action needs to be taken against a financial institution, he must apply for a High Court order. The High Court may make an order if it is satisfied that "it is reasonable to do so," and that the "common good" demands it. The High Court may make the order subject to certain conditions.

Financial institutions include banks, building societies (mortgage institutions), credit unions, trustee saving banks, industrial and provident societies, friendly societies, investment trust companies and managers of unit trusts. Insurance companies are excluded from the definition of financial institutions used in this amendment.