

DATA PROTECTION ROUNDUP

Data Protection Roundup is a completely revised and updated version of this feature which we published in Privacy Laws & Business last February. The index published in our November 1988 issue gives references to each country in previous issues.

AUSTRALIA passed a Commonwealth (federal) Privacy Act in November 1988. The Act applies only to the Commonwealth public sector, and not to State government agencies nor as a whole to the private sector. However, the Act controls both the public and private sectors in their use of the Tax File Number, backed by guidelines enforced by the Privacy Commissioner. The Act covers physical persons and both automated and manual records. It came into force on January 1st 1989.

AUSTRIA's Data Protection Act was passed on October 18th 1978 and came into force in stages from January 1st 1980 to January 1st 1982. It was amended in July 1986 with the new provisions coming into force on July 1st 1987. The law covers physical and legal persons, and mainly automated data in both public and private sectors. It has a central registration system.

BELGIUM's Consultative Commission on the Protection of Private Life is limited by the royal decree of December 30th 1982 and the law of August 8th 1983 to the National Register of Physical Persons. A comprehensive Data Protection Bill was presented to the legislature's lower house on November 10th 1983 and has been studied by the Council of State. After the legislative elections in December 1987, the bill has been taken over by the new legislature. The next step is detailed scrutiny by the legislature's Justice Committee. The bill covers physical persons, automated data and both public and private sectors. It has a central registration system.

CANADA has a Privacy Act passed in 1982. It came into force in 1983 and covers only the federal government and federal agencies. It was reviewed by a parliamentary committee and its report was published in early 1987. It recommended extending the Privacy Act to State owned companies. This is expected to occur in 1989, although Air Canada and Petro Canada will be excluded. Québec and Ontario have laws which combine both public access to government information and privacy at the provincial level of government. Other provinces also have, or are planning, provincial privacy laws. The provinces have the power to regulate privacy in the sectors over which they have jurisdiction, like banks and insurance companies.

DENMARK has separate Public Registers and Private Registers Acts, both passed in June 1978 and which came into force on 1st January 1979. The Private Registers Act covers automated and manual records, physical and legal persons. Three types of organisation are required to register with the Data Surveillance Authority; credit reference bureaux, data processing service bureaux and blacklist registers, for example concerning bad credit risks. Amendments were passed in June 1987 strengthening the data subject's right of

access, and came into force in April 1988.

FINLAND passed a Personal Data Files Act on February 4th 1987 which came into force on January 1st 1988. It covers automated and manual records, and physical persons in the public and private sectors and requires companies to notify the Data Protection Ombudsman if they are processing certain types of name-linked data eg. credit information.

FRANCE has a Data Processing, Data Files and Individual Liberties Act passed on January 6th 1978. It covers both automated and manual records in both public and private sectors and has a central registration system. It came fully into force on January 1st 1980.

THE FEDERAL REPUBLIC OF GERMANY. The Federal Data Protection Act was passed on January 27th 1977 and came fully into force on January 1st 1979. The law covers physical persons, automated and manual records in both public and private sectors. Public sector name-linked files have to be registered with the Federal Data Protection Commissioner, while certain private sector files have to be registered with the Lander (state government) data protection supervisory bodies. In addition the Lander have separate data protection acts covering access to name-linked data held by their tier of government and institutions owned by them, like banks.

GREECE introduced a data protection bill into the legislature in November 1987 but it was withdrawn by the Justice Minister a few months later for further consideration. The bill covers physical persons, automated and manual data in both the public and private sectors and has a central registration system. A revised bill is due to be introduced into the legislature in 1989.

GUERNSEY passed its Data Protection Act on July 30th 1986, which came into force on November 11th 1987. It covers physical persons, automated data in the public and private sectors. Unlike the UK, Guernsey has no Registrar. The Advisory and Finance Committee oversees the law.

HONG KONG published Data Protection Principles and Guidelines in March 1988. The government wrote to public and private sector computer users informing them that in principle data protection legislation should be introduced and meanwhile inviting their compliance on a voluntary basis. These Guidelines are being reviewed starting in March 1989.

ICELAND's Act Respecting Systematic Recording of Personal Data was passed in 1981 and came into force on January 1st 1982. It covers both automated and manual records, physical and legal persons in both public and private sectors and has a central registration system. Unusually, the law was drafted with a clause that required it to be abrogated after three years. From January 1st 1986 a new law with minor amendments came into force.

IRELAND's Data Protection Act was passed on July 13th 1988. The Act covers physical persons and automated data in both the public and private sectors. The Act requires the registration of certain categories of data, such as sensitive data, all personal data held by public bodies and all personal data held by financial institutions, credit reference agencies, debt collecting agencies or direct marketing agencies.

ISLE OF MAN passed its Data Protection Act on July 16th 1986. In April 1988, a Data Protection Registrar was appointed and on October 17th 1988 a six month registration period began. The Act will come fully into force on October 17th 1990. The Act is similar to the UK Act except that the exemptions have been widened to exclude many small businesses. Other differences include registration requirements and costs.

ISRAEL's Protection of Privacy Law was passed in February 1981 and came into force on September 11th 1981. It covers physical persons only, and automated records in both public and private sectors and has a central registration system. The law was amended on 4th March 1985.

ITALY's Data Protection Bill was presented to parliament in 1984 but was withdrawn by the Justice Minister in 1985. Since then, the government and the data protection working party of Confindustria (the major industry federation) have had intermittent discussions on a new bill. Professor Mirabelli, who chaired the committee which drafted the 1984 bill, is again leading the work of drafting a new bill, which is expected to be published in 1989.

JAPAN. A data protection act was passed on December 9th 1988 covering national government departments. Until now, there has been a data protection law covering only regional government. In addition, the government has established a Personal Data Protection Committee in the Consumer Policy section of the prime minister's advisory Social Policy Council. This will study whether privacy principles might be encouraged in the private sector, and if so, how might this be achieved.

JERSEY, a self-governing entity within the UK, passed a Data Protection Law on April 30th 1987. This is similar to the UK's Data Protection Act, covering both public and private sectors and using a central registration system. It came into effect from November 11th 1987, the same date as the UK law became fully operational.

LUXEMBOURG's Act regulating the use of name-linked computer data was passed on March 31st 1979 and came into force on October 1st 1979. The law covers the public and private sectors and has a central registration system.

THE NETHERLANDS Data Protection Act was adopted by the Upper House of the States General (legislature) on December 27th 1988 and received royal assent the following day. It will come into force on July 1st 1989. The Act covers physical persons, gives legal persons some rights, both private and public sectors, automated and manual records. It will work on a system of public declaration of name-linked files which will have to be notified to the Registration Chamber.

NEW ZEALAND has an Official Information Act which came into force on July 1st 1983. It groups together in the same law access to a person's government records on himself and access (subject to certain exceptions) to a broad range of government information. The government is considering extending data protection legislation to the private sector but a system of mass registration for companies is unlikely.

NORWAY has a Personal Data Registers Act, passed in June 1978 which came into force on January 1st 1980. It covers both the public and private sectors, manual and automated records, and there is a central registration system. The Act was amended on October 1st 1987 and was strengthened regarding direct mail, telemarketing and consumer credit.

PORTUGAL's government tabled a data protection bill in the legislature in early 1984. The bill which had not been debated before the election in July 1987 covers both the public and private sectors, automated and manual records and has a central registration system. In 1988, Parliament revised the Constitution of the Portuguese Republic. Article 35 of the Constitution covers the use of data processing, and includes provisions on data protection. Infringement of its provisions incurs a penalty of imprisonment under article 181 of the Penal Code.

SPAIN's data protection bill was first published in June 1984 but has made little progress since. It covers automated records in the public and private sectors and has a central registration system. In summer 1988, the Izquierda Unida, the leftist grouping in the Cortes (legislature), put a motion to request that the government move forward on its data protection proposals. But so far, the government has not responded.

SWEDEN enjoys the distinction of the world's first national data protection law in 1973, which has since been amended several times. It covers physical persons, automated records in both the public and private sectors and has a central registration system. As the country with the most experience of data protection legislation it has provided a model for several other countries eg. France and the UK.

SWITZERLAND's Minister of Justice submitted to the legislature a revised and simpler Federal Bill on the Protection of Personal Data on March 23rd 1988. The bill covers automated and manual records in the public and private sectors and has a registration system for certain categories of name-linked data. The bill is currently being reviewed by a legislative committee.

THE UK's Data Protection Act was passed in 1984 and came fully into force on November 11th 1987. The law covers automated records and physical persons in both public and private sectors and has a central registration system.

THE USA's Privacy Act was passed in 1974 and covers the federal government only. Each agency has to publish in the Federal Register at least annually a notice of the existence and character of its system of records. Individuals are given a right of access to these records. Several states, such as New York and California have similar laws covering access to records held by state agencies.

There is also sectoral federal data protection legislation for example, the Federal Fair Credit Reporting Act, The Family Educational Rights and Privacy Act of 1974, and the Video Protection Act passed in 1988. In late 1988, the US Computer Matching and Privacy Protection Act became law. It covers federal agencies and requires them to follow certain standards when carrying out computer matching to ensure that individuals are not harmed by unauthorised use of name-linked information or refused government benefits because of inaccurate data.

In addition to privacy legislation as such, in the absence of a data protection authority on European lines, government policy is also influenced by litigation.