



UK bill brings data subjects strong privacy rights

The UK Bill to implement the EU Data Protection Directive was finally published in mid-January (PL&B Oct '97 pp. 10-11). The Bill improves individuals' rights and gives the Registrar wider enforcement powers, but leaves open some practical questions, such as details on notification and transitional periods.

The Bill, which gives data subjects important new rights, will enable individuals to control the use of their data better than before. The Bill has been welcomed by the Data Protection Registrar, Elizabeth France. Although she has a few concerns, she generally thought that it was workable legislation.

Interestingly, the text does not contain any reference to "privacy" as such. The new Bill includes many elements from the 1984 Act. The familiar eight data protection principles have been included, although in a strengthened form. The principles now also include rules on transborder data flows. Also, there are now statutory conditions that have to be met before any processing can take place, and these include specific conditions for sensitive data.

The Bill will be amended later by provisions on transitional periods, and additional provisions will be included in secondary legislation. Once the Act has been passed, it will apply to data controllers who are established in the UK or who use equipment in the UK for processing data.

Wider compensation for damage

Individuals will benefit from new legislation in the form of stronger rights in relation to data controllers. In future, data subjects may request data controllers to stop, or even not to start processing their personal data, if the processing is likely to cause damage or distress.

This right also applies in the field of direct marketing, with the difference that no proof of likely damage to the individual is required. An individual who has suffered damage because of the actions of a data controller may take the matter to court in order to receive compensation.

Extended subject access rights

With regard to subject access requests, individuals will be able to receive more information from data controllers than before. In addition to details on the personal data which is being held, data subjects will be able to receive information on the purposes for which their data is being processed, and the recipients to whom that data may be disclosed.

The range of data will also be wider than before as some manual filing systems are covered. Unfortunately, the definition of manual filing systems that will fall under the new law is not very clear. The current text states that manual filing systems which are structured according to criteria relating to individuals, and which can be easily accessed are covered. In addition to microfiches, certain sound and image data, for example closed-circuit television films which can be searched automatically by reference to an individual (without disproportionate effort), will be included.

Businesses should benefit from simplified rules

In the past, businesses have lost time by having prepared subject access requests without being able to send them in the absence of the requested fee. The new Bill proposes that responses need not be prepared before receiving the fee. The period to comply with the request would be 40 days, the same as under the 1984 Act, but starting from the date of receiving the fee and all necessary information.

Notification should also become simpler. Details of the scheme are still being discussed. The Bill provides for the Data Protection Registrar to be renamed Commissioner under the new law, and to make proposals to the Secretary of State on notification regulations. There is no information as yet about what the transitional provisions will be. The Government intends, however, to stretch the implementation of the Bill over three years as permitted by the Directive.

Commissioner will have new powers

The Data Protection Commissioner will have a new power to issue information notices. The power will enable her to request information about the data controller's processing operations. Remarkably, apart from requests from data



subjects to do so, the Commissioner will also be entitled to use this power if she has reasonable grounds to believe that the data controller has breached, or is likely to breach, the data protection principles. This is a change compared to the current law, under which the Registrar needs to have evidence of non-compliance before being able to act.

Of similar importance is the new power to serve an enforcement notice on any controller who does not comply with the data protection principles. Currently, the Registrar is able to take enforcement action only against registered data users.

Tax and crime related data exempt from fair processing

The Bill proposes that personal data processed for the purposes of preventing or detecting crime, and collecting taxes, will be exempt from the requirement of fair and lawful processing. The Registrar has expressed serious concern over this proposal, making it clear that she sees no justification for such a blanket exemption.

Media wins the battle on press freedom

The issue of media freedom and the protection of individual's personal data has been resolved by giving the media wide exemptions. These exemptions prevent individuals from accessing

their data or stopping processing before publication.

However, certain conditions have to be met. The processing needs to be undertaken in order to publish such journalistic, literary or artistic material that the media believes to be in the public interest. Another condition is that the media must believe that complying with data protection provisions would not be possible.

While the existing legislation does not provide any exemptions for the media, the proposed Bill could make processing for journalistic purposes under the above mentioned conditions exempt from all the data protection principles except for security measures. This clearly makes it quite difficult for an individual to pursue his rights. Although individuals may seek compensation after publication for distress suffered, it may prove to be costly.

The Data Protection Bill completed the Committee Stage in the House of Lords in February. It must then go through the Report stage before passing to the House of Commons in March or April.

**The Bill, (ISBN 0108360784) is available from the Publications Centre, Price: £6
Tel: 0171 873 9090 It has also been published on the Internet at <http://www.parliament.the-stationery-office.co.uk/pa/pabills.htm>**

***Privacy Laws & Business* launches new UK Data Protection Act 1998 Information and Compliance Programme**

Privacy Laws & Business has launched a new service to help you prepare for the new Data Protection Act which will enter into force by October, 1998. The service covers what you need to know to implement your compliance programme. You learn of the new law's requirements by way of workshops, compliance guides and a helpline which may be bought together as a package or separately. The workshops include expertise from *Privacy Laws & Business*, other experts and the latest advice from the Data Protection Registrar's office. We also provide help by way of consultancy and/or an in-house presentation.

The programme objectives are to help you:

1. understand the provisions of the Data Protection Bill and changes from the 1984 Data Protection Act
2. make effective representations as the Bill passes through the Parliamentary process
3. prepare your organisation's compliance programme and make adjustments when the Bill is adopted
5. exchange experience with other organisations on ways to plan and conduct training programmes.

Privacy Laws & Business has brought together some of the UK's leading data protection law experts to write about the new Bill in our recently published first Compliance Guide. They include Simon Chalton (Bird & Bird), Chris Amery, Nick Platten, and Angus Hamilton (Hamiltons). The first Guide compares the Data Protection Bill 1998 with the Data Protection Act 1984. Three more Guides will follow later this year analysing the new Data Protection Act and helping you prepare your compliance programme.

For more information, contact *Privacy Laws & Business* or check our website www.privacylaws.co.uk