
Editorial

Data Protection

In last month's issue, Julian Lew analysed the Council of Europe Convention and the OECD Guidelines on Data Protection. We will be publishing a further note by Dr Lew on the recently published Home Office White Paper "Data Protection — the Government's Proposals for Legislation" (Cmnd 8539). This matter, however, also seems to us to call for editorial comment.

The principal feature of the Government's proposals is the establishment of a registry of users of data systems which process automatically information relating to identifiable individuals. We would support this approach particularly as the Registrar is to have a substantial measure of independence and there will be a right of appeal to an independent tribunal against his rulings. Concern had been expressed regarding the Government's earlier proposal to place the matter under the control of the Home Office — itself a major data bank operator.

The Government does not propose to give the force of law to codes of practice in this field though it recognises that certain sensitive areas (such as medical records) may need to be covered by detailed regulations. The general data protection principles set out in the Younger Report (as embodied in the Convention) will be codified in the legislation though it is unlikely that these general principles could be backed by the criminal sanctions to be included in the legislation though breach of the principles could give rise to a civil action for damages or an injunction.

It seems that it is likely to be some considerable time before the proposals are enacted. Further time would then be needed for the new safeguards and registration requirements to be fully implemented in practice. Given the rapid pace of technological development in this field, the proposed safeguards may well be somewhat outmoded by the time they are implemented though the general principles would clearly continue to be of value. This matter should be accorded greater priority by the Government in view of the need to keep pace with these

rapid developments. If the UK safeguards are perceived at an international level to be inadequate, this could clearly prejudice our present leading position in data processing and hamper the flow of information to or through the UK.

Acceptance of the high principles contained in the proposals by the senior management of businesses will not, of itself, solve all problems here. As Mr Michael Meacher MP demonstrated during a recent Commons debate on this subject, it is still unacceptably easy for unauthorised persons to obtain personal information on "data subjects" whether it be from businesses or from Government agencies. It is important that managements are aware of the extent to which it may be possible for staff at quite a low level in an organisation unwittingly to "leak" confidential information, eg in response to telephone requests. Tightening of management controls in this connection might well achieve greater improvements in data protection than the more elaborate measures contained in the proposals.

Exchange Control

The Treasury Direction freezing Argentinian assets as part of the Falkland Islands crisis measures (SI 1982/512) is headed ominously "Exchange Control" which will bring a chill to the heart of many practitioners. This feeling will have been reinforced by the subsequent publication of Bank of England Notice EL 1 giving details of the new controls. Those who argue that Exchange Controls are unlikely to be reintroduced because the Bank of England has dismantled the necessary administrative machinery should take note of the Bank's rapid mobilisation in this instance.

Although the current crisis does, without doubt, justify such measures, vigilance will be needed to ensure that this precedent is not exploited by those opposed to free trade generally. It would be unfortunate indeed if exchange controls were once again to rise Phoenix-like from the ashes of the 1979 liberalisation.