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# Editorial

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## Data Protection Progress

In the Editorial of our May 1982 issue we expressed concern at the likely delay before the data protection White Paper proposals were enacted. The introduction of the Government's Data Protection Bill in the House of Lords at the end of last year was thus viewed with some satisfaction by those concerned at the possible abuses of data banks.

The Bill has now received its second reading in the Lords and, while the Bill has generally been well received, there are a number of points of detail on which reservations have been expressed by the legal profession and by industry.

The basic definitions of "data" and related expressions in clause 1 of the Bill have been criticised as too wide as they could encompass, eg, word processing or electronic mail systems and computer accounting systems. Clearly the registration and subject access provisions should not cover such applications where the main purpose is not the collation of information about individuals. This point could clearly be of considerable importance to solicitors' practices.

Concern has also been expressed that too many data users would be required to register with the Data Protection Registrar. The Registrar would have only about 20 staff and the administrative aspects of registration would thus be likely to take up most of their time, leaving little time for broader supervisory functions such as investigation of complaints. It would therefore seem preferable for the registration requirements to be more selective, concentrating on large data users, on users of very sensitive personal data and on data which may be passed to third parties without the permission of the data subject. The Council of Europe Convention, which forms the background to the Bill, does not require registration of data users and the CBI has drawn attention to the adverse experience of other European countries, such as Norway, with universal registration requirements.

Clearly if the wide registration

requirements are proceeded with, the refusal of registration by the Registrar would place a data user under severe disabilities and the Bill contains provisions for appeals against the Registrar's rulings to a Tribunal. The Registrar could, however, refuse registration if he is satisfied that the applicant is likely to contravene any of the data protection principles scheduled to the Bill or if he "considers that the information available to him is insufficient to satisfy him that the applicant is unlikely to contravene any of those principles" (clause 7(2)). This would give the Registrar unacceptably wide discretionary powers and the provisions should be reformulated in a more objective and neutral way.

The Bill covers personal data relating to any identifiable living individual including any expression of opinion about him but not any indication of the intentions of the data user in respect of that individual. This would seem likely to lead to considerable scope for disputes over interpretation — for instance on computerised staff records a statement that an employee is not considered suitable for promotion could come within the scope of the Bill while a statement that it was not intended to promote an employee would not. Some further thought is needed on this aspect.

The rights contained in the Bill for data subjects to demand copies of data relating to them held by a data user could be open to abuse, eg by a concerted campaign by a number of data subjects connected with a pressure group. There would seem a need for provisions for data users to be relieved from complying with demonstratively frivolous or vexatious demands.

Lastly but importantly, concern has been expressed at the extent of the exceptions in the Bill regarding information obtained or stored for the purposes of the police, Inland Revenue, Customs and Excise and the immigration authorities and great care and vigilance is needed regarding these provisions.

These reservations apart, we welcome the Bill which we feel introduces valuable safeguards in a dangerously under-regulated field.