

3. PRINCIPLES OR DETAILED LEGISLATION.

3.1 UN Handbook

The UN Handbook summarises the arguments for a short Act based on principles or a long Act which goes into detail.

‘The length of the law is initially a matter of taste, but its implications are real and subtle. A lengthy law stems from the desire to provide it with sufficient detail to avoid political arbitrariness once it has been implemented and is acted upon. For example, specifying in details the membership of the co-ordinating agency or of the national Statistics Council guards against its manipulation or political favours or nepotism. But the more detail is added to the law, the less it is able to adjust to changing circumstances. Naturally, environmental changes and other unforeseen circumstances would then require legal changes; there is always great difficulty in finding political interest for modifications to a Statistical Act.’

‘There are benefits to both cursory and detailed laws. In some situations, a very generally formulated law that gives a great deal of flexibility to the statistical agency has worked well. Conversely, lengthy and painstakingly detailed laws have afforded key actors a great deal of protection. Of course, there are drawbacks in both cases as well. What this suggests is that a workable compromise between these two considerations should be found and that the success of the lawmaker lies in getting the compromise right. Nothing concrete can be said on the subject in a generic way.’

3.2 Current Practice

There are wide variations between countries. The Nordic countries certainly favour brevity, outlining rather than detailing the requirements, whereas Canada the Czech Republic and Germany leave nothing to chance. Canada’s law is very comprehensive, even specifying the exact information to be collected from companies for the Business Register, and the Czechs specify in great detail the process for handing over a Census questionnaire.

‘If a person hands over the completed census questionnaire to the community in accordance with paragraphs 4 and 5, they shall enclose a census questionnaire in an envelope and stick it down. The community make an indication on the envelope showing that it contains a census questionnaire and shall keep the envelope so that its contents cannot be abused and shall deliver the intact envelope to the Czech Statistical Office no later than within 14 days following the decisive moment.’

Much seems to depend on the ease with which supplementary legislation can be passed and or whether Codes of Practice are considered effective. Given the pressures on parliamentary time in the UK amending legislation can prove very difficult to implement, paradoxically an argument in both directions. Detailed laws may become too rigid, while a short Act almost invariably requires secondary legislation.

A law based on principles is considered by some as a hostage to fortune, leading to arguments over interpretation. Is the name of a company confidential when it responds to a statistical enquiry? This is not a hypothetical question. The publication of a Business Register was held to be possibly in contravention of the 1947 Statistics of Trade Act. Given the penalties for breaking the law, the Business Statistics Office naturally took no risks.

There is also the difficulty of reconciling conflicting principles, as in the 'right to know' and confidentiality. This has become an increasing problem in recent years with the developments in data storage and handling providing much greater opportunities for using micro data. Confidentiality clauses are normally coupled with severe penalties for breaking confidentiality, which leads to great caution on behalf of the staff involved in handling such data. Confidentiality has been defined in ways in which it was never intended simply because of nervousness on the part of the staff involved. Once the lawyers have said 'well, that may breach confidentiality' the shutters come down. In the Canadian law, the first sub-heading in the Secrecy section is Prohibition Against Divulging Information, but then there is a much longer section headed Exceptions to Prohibition, with six categories specifically identified. Given the vigour with which the Data Protection Act is being applied in the UK, a 'principles' Act would need to be carefully qualified in the section on Confidentiality.

3.3 Attitudes

The overwhelming response to the questionnaire was in favour (75%) of general principles, but frequently with provisos concerning issues that have caused problems in the past. Canada, Poland and Portugal favouring detail, the others principles.

The Dutch expressed themselves eloquently in favour of principles.

"I am quite comfortable with the Dutch tradition and our law of 1996, which lays down fundamental principles, obligations, and authorizations, but does not spell out the statistical programme in detail. The latter would imply unwanted restrictions on the flexibility that our users want these days. I am afraid that German and European Union experiences confirm my preference."

Finland, France and Sweden added 'riders'

Finland: We prefer an act which is mainly based on general principles . More detailed provisions are needed concerning data collection and statistical confidentiality.

France: Of course, this short act would deserve to be completed by some secondary legislation (dissemination and pricing policies, access to statistical information and databases, may be some of the points to be dealt with in secondary legislation). A Code of Practice is very useful and it should be as visible as possible, but it's not in the scope of a Law to establish and publish such a Code and the points dealt with by the Code (principles such as impartiality, objectivity, how to counteract the misuse of statistics, etc.) should not be present in legislation.

Sweden: A short Act based on general principles are preferred. Complementing rules can be given in an ordinance or a Code of Practice. In Sweden it takes time to change an Act and it is therefore preferred that the Act only contains the general principles and rules that according to the constitution has to be regulated in an Act. Most of the rules concerning production of statistics are given in the Official Statistics Ordinance.

Canada expressed the opposite view: General principles alone would mean that many important questions become matters of interpretation. Therefore, the important issues (reflected in answers above) have to be covered by detailed provisions in legislation.