

6. UK LEGISLATION

6.1. Relating to Professions

Professions can broadly be grouped under two heads. Those in which the professional body has legal status for controlling the activity of its members, who cannot practice without reaching certain standards, normally by examination, and are subject to a code of conduct which is enforced by that body. The other form of professional body is much looser. There may or may not be examinations and codes of conduct, but membership of the body is not a condition of working in that profession. Statisticians fall into this category, in company with market researchers, economists, etc. The RSS is a learned society as well as a professional body and although CStat, one of the membership categories, have a code of conduct, it is practically worthless in practice. There is certainly no way in which membership of the RSS, let alone CStat, could ever be a condition of employment in National Statistics. After all, several current or past Heads of Profession in the GSS are economists. In short, there seems to be little relevance for a National Statistics Act from the experience of other professions.

Legislation relating to professions, which covers relevant regulatory bodies, includes:

6.1.1. Medical

Coverage	Acts	Coverage
Medical	Medical Acts 1858, 1956, 1969, 1993	Doctors
	Dentists Act 1984	Dentists
	Nurses, Midwives and Health Visitors Act 1970, 1997	Nurses, midwives and health visitors
	Professions Supplementary to Medicine Act 1960	Regulatory bodies exist for: Opticians, pharmacists, chiropractors, osteopaths, Hearing aid suppliers, dieticians, occupational therapists, chiropodists, orthopodists, physiotherapists, radiographers, medical laboratory technicians, art therapists, clinical scientists, paramedics, prosthetists & orthotists, speech & language therapists. Planned UK Council of Health Regulators
	Veterinary Surgeons Act 1966	Veterinary Surgeons

6.1.2. Other professions

Law	Solicitors Acts 1932, 1974	Solicitors
Estate agents	Estate Agents Act 1979 Auctioneers Act 1845	Estate agents, auctioneers
Insurance brokers	Insurance Brokers (Registration) Act 1977	Insurance brokers
Architects	Architects Act 1997	Architects
Accountancy	National Audit Act 1983 Exchequer & Audit Departments Act 1966, 1921	Accountants
Finance	Financial Services & Markets Act 2000	Various financial services - deposit taking, insurance, investment

There is a certain commonality of topics included in the legislation. They are generally concerned with:

- identification of a professional body, with a council and committees
- professional education and training leading to a recognised qualification, and their supervision
- registration and registers
- supervision of practice, disciplinary provisions
- professional conduct, code of practice, misconduct, offences, suspension/restoration,
- penalties, appeals
- unfitness to practice
- professional indemnity insurance, (where appropriate)

Some Acts have provisions applicable only to that one profession.

Details can be seen the tables in Annex J.

6.2. Royal Charter

Many other professions are not subject to legislation but have obtained Royal Charters eg the Royal Statistical Society, Royal Economic Society, Royal Society, Royal Institution of Chartered Surveyors, Institution of Mechanical Engineers, British Computer Society, Institute of Chartered Accountants of England and Wales, Chartered Institute of Library and Information Professionals. Their terms often have similar structures relating to a society or council - qualification, registration, code of conduct, disciplinary provisions, penalties.

Most royal charters of incorporation are an expression of royal favour and are only sparingly granted. They recognise outstanding achievement on the part of an institution pre-eminent in its field. The main categories of institution which may receive a royal charter nowadays are the universities and some colleges, and organisations concerned with the maintenance and advancement of the qualifications and standards of a profession. They need to satisfy the Privy Council, the senior advisory body for the Crown, that they are the leading body in their field, have stability and permanence, and that they are set up and run their own procedures in such a way that they serve the public interest.

One of the conditions of a Charter is that the organisation may be required to submit information about itself to the Privy Council and the C&AG may be empowered to audit/investigate it and report.

6.3. Existing statistical legislation

The main UK existing legislation covers Statistics of Trade and the Census, both have run into confidentiality problems which have restricted their value especially to users outside government who tend to have a much greater requirement for microdata. There are two possible approaches. Either amend the Act or include special overriding 'exception', clauses in the new Act, where specific issues can be identified as in the Canadian legislation but this should be supplemented by a more general clause providing for a review of particular cases on their merits as set out in some other countries' legislation.

The following Acts are concerned with specific types of data but have no general provisions concerned with the statistics office or the national statistician (a recent creation). However, they feature confidentiality and offences.

6.3.1 Census Act, 1920 + Census Orders for each Census

A copy of the Act forms Annex K

It details the duties of Registrar-General in relation to censuses - data collection, report, expenses, Penalties for non-response

6.3.2. Births and Deaths Registration Act, 1953

A copy of the Act forms Annex L

It details the administrative procedures for registering births and deaths

6.3.3. Registration Service Act, 1953

s.19 Annual Abstract - send to Minister number of live births, still-births, deaths and marriages registered in the year Minister shall lay this before Parliament.

6.3.4. Population Statistics Act, 1938, 1960

Copies of the Acts form Annex M

Collection of information from birth and death registers in England & Wales (1938) and Scotland (1960)

6.3.5. *Statistics of Trade Act, 1947*

A copy of the Act forms Annex N. Its sections are:

- 1 Power of competent authority to obtain information
- 2 Census of production, distribution & services
- 3 Returns for the purposes of a census
- 4 Offences relating to returns

- 5 Power to prescribe additional subjects of inquiry by Order in Council
- 6 Duty to notify undertakings to Board of Trade (now transferred to Chancellor) or other competent authority
- 7 Report to Parliament
- 8 Advisory committees
- 9 Disclosure of information
- 9A Exceptions from s.9
- 10 Information from persons entering or leaving the UK by air
- 11 Orders
- 12 Notices
- 13 Offences by bodies corporate
- 15 Expenses
- 17 Interpretation

6.4. Other general legislation

Two Acts in particular need to be carefully considered - data protection and freedom of information - especially the former, as 'confidentiality' has been, and is, one of the major restrictions on the full development of National Statistics. Some Statistics Acts make specific reference to overriding other Acts.

6.4.1. Data Protection Act, 1998

This Act came into force on 1 March 2000. It gives effect in UK law to the 1995 EC Data Protection Directive. The Act strengthens and extends the data protection regime created by the Data Protection Act 1984, which it replaces.

Scope

The Act applies to:

- computerised personal data;
- personal data held in structured manual files.

It applies to anything at all done to personal data ("processing"), including collection, use, disclosure, destruction and merely holding data.

An enforceable good practice code

Organisations processing personal data ("controllers") must comply with the data protection principles. These require data to be:

- fairly and lawfully processed;
- processed for limited purposes;
- adequate, relevant and not excessive;
- accurate;
- not kept longer than necessary
- processed in accordance with individuals' rights;
- kept secure;
- not transferred to non-EEA countries without adequate protection.

Controllers must:

- meet one of six conditions in order to process personal data;
- meet further conditions in order to process sensitive* data
- inform individuals when their data are collected

* Sensitive data are those about a person's ethnic origins, political opinions, religious beliefs, trade union membership, health, sexual life and criminal history.

Individuals' rights

The Act strengthens individuals' rights to:

- gain access to their data
- seek compensation

It creates express rights for individuals to:

- prevent their data being processed in certain circumstances;
- "opt-out" of having their data used for direct marketing;
- "opt-out" of fully automated decision-making about them.

Notification

Controllers must tell the Information Commissioner about their processing (unless exempt).

Exemptions cover:

- manual records;
- core business activities;
- charities' membership records.

Schools and partnerships only notify once.

There is no provision for voluntary notification.

The Act

A copy of the Act is included as part of the report on this project. It is also available from www.hmso.gov.uk/acts/acts1998. The contents pages listing the sections of the Act are reproduced as Annex O

The following sections should be considered in relation to possible statistics legislation as they may be relevant (those marked * are particularly relevant to statistics):

1, 17, 18, 21, 23, 28, 29, 30, 31, 32, 33*, 34, 51, 52, 54, 55, 56, 63*.

Schedules 1*, Pt I, II; 2, 3, 8, Pt IV; 11, 12

6.4.2. Freedom of Information Act, 2000

The Act was passed on 30 November 2000. The Act will be enforced by the Information Commissioner

What does the Act do?

It gives a general right of access to all types of 'recorded' information held by public authorities, sets out exemptions from that right and places a number of obligations on public authorities.

Who does the Act cover?

Only public authorities are covered by the Act. These include Government Departments, local authorities, NHS bodies (such as hospitals, as well as doctors, dentists, pharmacists and opticians), schools, colleges and universities, the Police, the House of Commons and the House of Lords, the Northern Ireland Assembly and the National Assembly for Wales. It also includes a long list of other public bodies, ranging from various official advisory and expert committees, to regulators and organisations such as the Post Office, National Gallery and the Parole Board. A list is provided in Schedule 1 of the Act. There is a provision in the Act for other authorities to be named later and for organisations to be designated by the Secretary of State as public authorities because they exercise functions of a public nature or provide a service under a contract which is a function of that authority.

When will the Act come into force?

The Act will be brought fully into force by January 2005. Public authorities will have two main responsibilities under the Act. They will have to produce a 'publication scheme' (effectively a guide to the information they hold which is publicly available) and they will have to deal with individual requests for information. The duty to adopt a publication scheme will come into force first, according to the following timetable:

30th November 2002: Government Departments and their Agencies and other public bodies which are covered by the 'Open Government Code' ('Code of Practice on Access to Government Information')

28th February 2003: Local Authorities

30th June 2003: Police and prosecuting authorities.

31st October 2003: National Health Service

29th February 2004: Schools and other Educational Institutions

30th June 2004: Remaining public authorities

Note that the dates given here refer to when the schemes have to be in operation. Public authorities will need to submit them to the Commissioner for approval in advance of those dates.

All public authorities will be required to deal with individual requests from the 1st January 2005 when the general right of access to information held by public authorities comes into force.

What new rights are created by the Act?

Individuals already have the right to access information about themselves, held on computer, and in some paper files, under the Data Protection Act 1998. This is known as the 'subject access right'. As far as public bodies are concerned, the

Freedom of Information Act will extend these rights to allow access to all the types of information they hold, whether personal or non-personal. However, the public authority will not be required to release information to which any of the exemptions in the Act applies.

Anyone will be able make a request for information, although the request must be made in writing, which includes emails. The request must contain details of the applicant and the information sought. The Act gives applicants two related rights: to be told whether the information is held by the public authority · to receive the information (and where possible, in the manner requested, i.e. as a copy or summary, or the applicant may ask to inspect a record)

Public authorities will be obliged to provide information recorded both before and after the Act was passed.

Public authorities should also be aware that there is right of access to certain information under the Environmental Information Regulations.

Responding to requests

In general, public authorities will have to respond to requests promptly and in any event, within 20 working days. They may charge a fee, which will have to be calculated according to Fees Regulations. These regulations will come into force prior to January 2005 and details are not yet available. If a fee is required, the 20 working days will be extended by up to 3 months until the fee is paid.

In cases where information is covered by an exemption, but the authority is then required to consider the public interest in releasing it, the authority must provide the information within a reasonable time.

What types of information need not be released?

Some of the information held by a public authority may be regarded as exempt information i.e. it will not have to be provided in response to an individual request. There are 23 such exemptions and they relate to information held for a variety of functions. These include national security, law enforcement, commercial interests, and personal data.

Before relying on an exemption, a public authority will usually be obliged to consider two further points. Firstly some of the exemptions can only be claimed if the release of the information would prejudice the purpose to which the exemption relates. Hence, information held in connection with law enforcement can only be withheld if its release would for example, prejudice the prevention or the detection of a crime.

Secondly, some of the exemptions also require the public authority to apply the "public interest" test before making a final decision as to whether or not to release the information. The public interest test requires a public authority to consider whether the public interest in withholding the exempt information outweighs the public interest in releasing it.

Most of the exemptions will require a public authority to consider both the test of prejudice and the public interest test. However public authorities are advised to read the exemptions with care in order to determine whether they can be relied on.

It should be noted that only the information to which an exemption applies can be withheld. Hence if a particular document had been requested which contained some exempt information, only those specific pieces of exempt information could be withheld. The rest of the document would still have to be released.

Publication Schemes

The Act places a duty on public authorities to adopt and maintain publication schemes which must be approved by the Commissioner. Such schemes must set out the types of information the authority publishes, the form in which the information is published and details of any charges. The Commissioner may also approve model schemes for groups of similar bodies, for example: schools.

The Commissioner will be continuing to work with groups of public authorities to develop guidance on what should be included in publication schemes.

What is the Information Commissioner's role?

The Commissioner is an independent public official reporting directly to Parliament. She is responsible for implementing the Act. This involves:

- · Promoting good practice
- · Approving and advising on the preparation of publication schemes
- · Providing information as to the public's rights under the Act
- · Enforcing compliance with the Act

What guidance is available from the Information Commissioner?

A more detailed introduction to the Act is provided in the 'Overview' paper, available from the Information Commissioner's office or from its website: www.informationcommissioner.gov.uk.

The Commissioner will be updating and adding to the guidance on Act including further information on the exemptions. The following guidance is currently available:

Preparing for Implementation - Implementation Timetable
Preparing for Implementation - Publication Schemes
Preparing for Implementation - Publication Schemes - Guidance
Preparing for Implementation - Publication Schemes - Methodology
Preparing for Implementation - Publication Schemes - Approval Documentation
Preparing for Implementation - Publication Schemes a Practical Guide; Part 1 'Classes'
Preparing for Implementation - Dealing with individual requests

The Information Commissioner will publish her revised work plan for 2002 shortly.

Environmental Information Regulations.

The Environmental Information Regulations 1992 currently give access to information held by public authorities relating to the state of water or air, fauna or flora, or land where these are, or are likely to be adversely affected. Public authorities have two months to comply with requests for access and a fee can be charged. Further advice on the current regime can be obtained from the Department for Environment, Food and Rural Affairs.

It is expected the Environmental Information Regulations 2001 will come into force early 2003, replacing the current regime. Although the new regulations have not yet been finalised it is understood that proposals include the appointment of the Information Commissioner as the supervisory authority, a reduction of the time permitted for responding to requests, as well as extending the range of information available through the Regulations.

Once in force, the Environmental Information Regulations 2001 will be the principal means of gaining access to environmental information. Therefore any request for environmental information should be dealt with in accordance to the Environmental Information Regulations rather than the Freedom of Information Act.

The Act

A copy of the Act is included as part of the report on this project. It is also available from www.hms0.gov.uk/acts/acts2000. The contents pages listing the sections of the Act are reproduced as Annex P

The following sections of the Act should be considered in relation to possible statistics legislation as they may be relevant (those marked * are particularly relevant to statistics):

1, 4, 5, 10, 11, 12, 13, 17, 19*, 21, 24, 28, 29, 35, 36*, 38, 39, 40, 41, 43, 45, 46, 47, 48, 50-56, 57-61, 68-73, 81.
Schedules 1*, Pt I, II, III, IV, V, VI, VII

6.4.3. Human Rights Act, 1998

This Act does not have any specific references which relate to statistics, but it would be wise to consider its provisions in case they could lead to conflict.