

## 2 LEGISLATION

### 2.1 Reasons for Legislation

The UK is one of the very few developed countries that does not have an overarching law on official/national statistics. (The UK is not alone however in being unsure about terminology, Official and National seem to be interchangeable in all countries.) and even when there is no such law, as in France and the USA, there is an extensive network of laws. The French have laws for just about everything – confidentiality, setting up a statistics office and a national statistics council. The USA also has a multitude of laws governing each sector – health, commerce, population, etc. – and have produced an excellent Statement of Principles for a Federal Statistics Agency.

The comments from France are a worthwhile reminder that much of the pressure for legislation has arisen in countries where the infrastructure is unsatisfactory: *“A ‘good’ legislation may offer the opportunity of increasing visibility and transparency of statistical production. But its usefulness depends strongly on the historical and juridical environment of the country: in a country like UK or France, where there exists a long tradition for a sound civil service (with some kind of administrative immunity), with active and uncensored media, with a good mutual understanding between producers and users of statistics, with a statistical society having a long tradition, etc., having a detailed statistical legislation is certainly less useful than in some transition or developing countries. In this case, the probability of possible adverse results may become the principal danger”*. In other words, ‘if it’s not broke, why fix it?’

Each country has its own legislative tradition. The Netherlands have in their own words *“ more formal legislation than in the UK, but less than Germany. Statistics legislation has to fit with this legislative tradition and culture”*

The USA and France notwithstanding, the majority of countries have passed overarching legislation, many of them several times. Historically the reason has been to provide the authority to collect statistics, protect confidentiality, proscribe penalties for non compliance and regulate the operation of the Statistics Office. Increasingly, however, other factors have emerged which have led to the requirement for new legislation, including:

- Existing legislation is too restrictive
- Need to conform to international standards and extra-national requirements, especially from Eurostat.
- Desire to incorporate the UN Principles for Official Statistics, or at least some of them! (See Appendix 1)
- Confirming independence of Statistical Office
- Recognition of the fact that official statistics are not just for government but also for the public at large - an essential part of the infrastructure of a democratic society
- Consolidation, co-ordination, updating of existing laws and practices

Restrictions on the use of existing data were one of the prime motives for the Irish Act in 1993, their earlier Trade Statistics Act preventing the use of the micro data collected for purposes other than those specified in the Act.

New legislation is with Dutch Parliament at the present moment in spite of the fact that they have been passing statistics laws for over a century and their last law was in 1996, The new law introduces new elements, notably

The formal foundation of Statistics Netherlands as an independent executive agency, with legal personality and the **introduction of an accrual accounting system for their budget**. Is the funding nettle being grasped at last?

The formal [administrative, managerial] independence is in addition to the professional autonomy of the Office which is already well covered in previous legislation, **The significance of this change cannot be over estimated as virtually all laws to date only refer to independence in terms of professional activities.**

Further details are given overleaf in the Netherlands paragraph.

The issue was further probed by asking respondents to describe the reasons for the current Act replacing an earlier Act. The Polish statement is of special interest as it highlights **'the obligation to fulfil the information needs of the society'**. [Article 3 of the Act]

**Austria:** One basic principle of the Federal Statistics Act 2000 is the further legislative anchoring of statistics (exceptions: surveys where participation is voluntary).

Furthermore, the new act addresses in its first main part the "executive bodies of federal statistics" in the plural, thus providing for the possibility that other institutions besides the institution under public law of "Statistics Austria", whose chief task it is, may also be entrusted per federal act with some of the tasks of federal statistics, and therefore also made subject to the application of the new act.

Besides this, the following changes should be noted in brief:

- Determination of goals and principles, which are intended to bring the Federal Statistics Act 2000 up to the internationally achieved standard;
- Referral to all relevant EU legal norms as the general setting for national statistics
- An extension of the Act to the area of secondary statistics;
- Procedures for the keeping of registers, for acquiring data from registers and for the uniform use of classifications;
- The fundamental priority given to samples over full surveys;
- Additional requirements for reasons of data protection;
- Emphasis on minimising the burden on respondents, e.g. by providing information electronically;
- Extension of publishing requirements, in particular via internet;
- Extension of possible arrangements for outsourcing statistical surveys and other work, as well as in the implementation of EU co-financing;
- Regulation of scientific access to statistics data.

Finally, those regulations affecting the establishment of the new federal institution, its executive bodies, its working methods, financing and the interim provisions (in particular for its staff) should also be mentioned. The institution under public law "Statistics Austria" has two managing directors (one Director General – Statistics and

one Director General - Finance), to be represented by two supervisory boards (a Statistical Council and an Economic Council).

**Canada:** The most recent legislative changes affecting Statistics Canada have dealt with permitting voluntary surveys, and allowing (under certain strict conditions) sharing of income tax data with provincial statistical agencies.

**Denmark:** Act on Statistics Denmark hasn't undergone main changes.

**Finland:** We are revising the Statistics Act. The most important changes will relate to data collection (more detailed provisions on obligation to provide data) and the relation of the Statistics Act to some new legal acts like the Personal Data File Act and the Act on the Openness of the Activities of the Government Authorities.

**France:** In France, we have no general statistical legislation, just a law passed in 1951 to specify the rules on confidentiality of individual data. It has been amended several times in order to update its different points. On several points, a secondary legislation has been passed, mainly to deal with points such the implementation and role of our Statistical Council (Conseil National de l'Information Statistique)

**Netherlands:** There is more statistical legislation than the 1996 law, viz. the Law of 1936 holding measures to obtain correct economic statistics. This law is the foundation for the legal obligation for business to respond to our surveys and for Statistics Netherlands to guard the confidentiality of their responses.

The 1996 Law implied an upward "promotion" in legal status: Statistics Netherlands was founded in 1899 by Royal Decree. A change in the Constitution during the nineteen eighties forced us to give the Central Commission for Statistics a formal legal status: all permanent commissions with an independent status had to be given a legal foundation. It was deemed logical to give the Central Bureau as the factual producer of statistics the same formal legal status. The current legal revision is necessary for formal reasons again, viz. to establish Statistics Netherlands as an independent executive agency (abbreviated in Dutch as ZBO). There is a framework law that we have to comply with.

New legislation is with Parliament at this very moment. The new law is meant to integrate and replace the two existing laws. New elements will include: the formal foundation of Statistics Netherlands as an independent executive agency, with legal personality, and the introduction of the accrual accounting system for our budget. This formal (administrative, managerial) independence comes in addition to the professional autonomy of the office in terms of the programme, methodology, and publications, which is well rooted in the 1996 Law already. Moreover, the new law will better define the European component of our work, and will give us free access to data from registrations for statistical purposes.

**Norway:** The present Norwegian Statistics act is from 1989. The main change in this law from the earlier law is the right to use data in administrative registers for statistics

**Poland:** Quality changes and transformation from the government statistics to public (official) statistics, which is obliged to fulfil the information needs of the society, economic entities and government (administration) bodies and local governments

**Sweden:** A new Official Statistics Act got into force in 1 April 2001. The main

changes in new act was the implementation of the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

There has been an increasing trend in recent Acts to open with the reasons/motives for the Act. Relevant examples from Austria and Portugal are given in Appendices 2 and 3.

## 2.2 Attitudes to Legislation.

A questionnaire [see Appendix 12] seeking views, on the relative importance of the factors in favour or against legislation, was sent to selected countries. The results are set out in Table 1 over leaf.

**TABLE 1**

### Arguments in Favour/Against Legislation

Scale* In Favour	Unit/Rating
Public declaration that Government respects the integrity of the National Statistical Service/Office (NSO).	5.0
Opportunity to sign up to the UN principles for statistical service	4.0
Ensures that key controls are in place. e.g. who is responsible for NSO and various procedures such as appointment of National Statistics Head (NSH)	4.5
Revision needed due to existing legislation causing problems.	4.6
Consolidation/integration of scattered laws.	3.8
Updating. Many changes needed.	4.0
Requirements to conform to international standards.	3.3
<b>Against</b>	
The culture in which the National Statistics Service/Office operates is more important than legislation.	2.4
Legislation produces unforeseen adverse results.	2.2
Legislation introduces rigidity making it difficult to make changes.	2.6

**\* 5 = very important; 1 = totally unimportant**

The most striking result is the significantly greater importance attached to the points in favour rather than against, and the overwhelming vote in favour of openly demonstrating integrity. This is another example of the way in which opinion is in advance of practice. Integrity is rarely mentioned in the laws, but is a key element in the UN Principles and features frequently in papers written on developments in national statistics. Phrases such as 'impartial, relevant and reliable statistics are among the cornerstones of any smoothly running democratic society' (from the

CEIES paper on User Requirements to the DGIN's 2002 Palermo conference) are commonplace.

Relevant comments in covering letters from the Chief Statisticians (so they came from the heart, not in response to a specific question) include:

'I must say that I find it difficult to understand how you can sustain a high integrity national statistical system without underpinning legislation. Otherwise, the mode of operation will depend too much on the attitudes and behaviours of the personalities involved. Whilst some will understand the importance of the independence of national statistical activities, others will want to be more interventionist. Certainly, in Australia, our statistics legislation has served us well.'

'I feel very strongly that an objective statistical system, under an independent National Statistician is a key lynchpin of a modern democracy. **This independence should be enshrined in legislation and I would be gravely concerned at the motives of anyone opposed to this course of action.** The National Statistician should be given the task to prepare the first draft of the legislation.'

There are dangers in legislation producing unexpected results, as illustrated by the earlier Irish Act, and in the UK our 1947 Statistics of Trade Act prevented, for example, the publication of a Business Register, but now that we are aware of the problems hopefully they could be minimised by careful drafting. (See also section 3 on principle or detail for legislation).

#### **The comments made by respondents include:**

*"Public declaration that Government respects the independence of the Government Statistician. The Irish legislation places the CSO and the aegis of the Prime Minister for this reason."*

*"There is no argument against legislation – framed from the prospective of the public's right to know and the independence of statistics from politics."*

*"The Irish legislation sets out very clearly the role of the CSO and the responsibilities and independence of the Director General. **I would not like to be without it.**"*

*"Codifies the arrangements for statutory independence. Makes them transparent. Arrangements will largely be consistent against changes in Ministers and National Statisticians."*

*"It (legislation) **will provide a quantum leap in the level of public trust in National Statistics.**"*

*"Depends of course on the degree of complexity and details introduced in the legislation; adverse results and rigidity would be less likely if new legislation is just a framework, leaving to secondary legislation the responsibility to enter into more detail. For instance, the difficult debate between the US Congress and the US Bureau of the Census just before the 2000 decennial Census would have been less harsh if US Constitution did not refer to the Census. In the US case, secondary legislation may also be a problem because of the high number of "statistically driven formulae".*

*“A ‘good’ legislation may offer the opportunity of increasing visibility and transparency of statistical production. But its usefulness depends strongly on the historical and juridical environment of the country; in a country like the UK or France, where exists long tradition for a sound civil service (with some kind of administrative immunity), with active and uncensored media, with a good mutual understanding between producers and users of statistics, with a statistical society having a long tradition, etc., having a detailed statistical legislation is certainly less useful than in some transition or developing countries. In this case, the probability of possible adverse results may become the principal danger. One specific point in European countries: because of the increasing importance of laws on confidentiality, it’s important to specify the relations between statistical processing and protection of individual data and precisely who is entitled to use these individual’s data, for which purpose and under which conditions.”*

## 2.3 UK Position

The motivation for a UK Act has been largely driven by public concern for the integrity of official statistics. The RSS, meeting and publication [1989] on *Counting with Confidence* brought to the surface fears of the political manipulation of official statistics under the Thatcher government, which fed into the Labour Party manifestos of 1992 and 1997, the Green and White Papers, the Ministerial Directive, the Framework Document, and the publication of the Codes of Practice and Protocols. A subsidiary factor was the debate on reliability following the damaging revisions to the ‘average earnings index’ which led to the inclusion in the Framework Document of quality assessment as one of the Statistics Commissions responsibilities. Both factors, however, add up to the same principle - public trust in official statistics.

The UK did make a hesitant start towards legislation in 1966 when the House of Commons Select Committee Report on Official Statistics recommended the setting up of not one but two Standing Committees [paragraphs 61 and 83]. The one for Business Statistics was a ‘should be established’ but the one for Social Statistics was only ‘consideration should be given .....!’ Shades of the days when Britain, if not the workshop of the world, was at least a major manufacturing nation. The end result was the setting up of the [unofficial] Standing Committee of Statistics Users in 1970 by the then head of the GSS Professor Claus [now Lord] Moser, the ESRC providing the secretariat, the RSS the chairman. Claus Moser pursued the idea of an official ‘Statistics Council’ during the 1970’s but met with almost total opposition from within the GSS [see report by Stella Cunliffe for the SUC in 1984] The issue received a public airing at the 1978 SUC conference, but, as Claus resigned just before the conference, the paper was dismissed by John Boreham as interesting but impractical. Official statistics then entered the Thatcher/Rayner ‘Dark Ages’ where they remained till the Pickford report [1989] and the statement by the Chancellor at the Lord Mayors banquet in 1992 *“official statistics are produced not just for the Government but for the benefit of business and the public at large”*. The experience of the 1980’s reinforces the view that **National Statistics needs the protection of a Law**, which enshrines the independence of the service and defines key roles and responsibilities. **‘ Ministerial Directives’ can be changed overnight.**

The legal position on integrity is already covered by Article 285 of the Amsterdam Treaty:

*‘The production of Community statistics shall conform to impartiality, reliability, objectivity, scientific independence, cost-effectiveness and statistical confidentiality’.*

Authority to collect, confidentiality and penalties for non compliance are already covered by existing legislation. The argument for overarching UK legislation is therefore based on public perception of political interference, which requires that the government publicly affirms the independence of National Statistics in a UK law.

Drafting a Bill is a major undertaking. This report can only discuss the broad outlines and the Framework Document is an excellent starting point. The aims and objectives cover key elements, such as the importance of National Statistics for democratic debate, recognition of the needs of users outside government and the setting up of the Statistics Commission as a safeguard to the independence of the statistical system. The prospect of legislation, however, not only provides opportunities for updating our statistical system but also the 'opening for the Statistics Commission to examine its current role and seek changes if/where necessary. The present role of the Commission is more restricted than in most other countries. As with our judicial system, the Commission seems to be partly cast in adversarial mode, protecting the public against National Statistics as well as against government interference, an arms length relationship rather than an active involvement with the National Statistician in planning the statistics programme. The dividing line between independence and involvement is narrow but this is a good time to discuss it. The role of Statistics Councils [the term Commission is rarely used in other countries] is briefly covered in section 4 and more fully described in Note 3.