

Statistics Commission



EFFECT OF THE STATISTICAL LEGISLATION FRAMEWORK IN THE UK ON THE WORK OF THE GOVERNMENT STATISTICAL SERVICE

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EFFECT OF THE STATISTICS LEGISLATION FRAMEWORK IN THE UK ON THE WORK OF THE GOVERNMENT STATISTICAL SERVICE AND POSSIBLE DEVELOPMENTS IN THE FUTURE

Summary

The complexity of the statistics legislation framework is confusing, and leaves members of the Government Statistical Service unsure about whether the activities they wish to carry out are within the law. Particular problems have arisen because of the lack of powers to collect information and because of legal requirements governing the confidentiality of information, which have prevented data-matching to produce correlated statistics. To deal with these constraints, amending legislation is being continually introduced, and other administrative measures such as sharing staff are being devised. The current position, especially on data-sharing, is not satisfactory and acts as a constraint on the work of the Government Statistical Service. Future developments, such as identity cards, could impact on this situation.

Scope of this paper

1. This paper reports on the effect of the existing statistics legislation framework in the UK on the ability of the Government Statistical Service to conduct its work efficiently and effectively. It considers specifically whether the existence of, or lack of, legislation constrains the work of the Government Statistical Service, and therefore, by implication, of Government generally. This report includes an assessment of whether the current position is satisfactory.

2. A considerable amount of work has been carried out recently on whether the organisational arrangements for statistics in the UK should be enshrined in legislation. Some of the papers on this topic have touched on the constraints resulting from the existing legislative framework; as such, they have been referred to in this report. However, the general topic of the current, and possible future, organisational arrangements is outside the scope of this study.

What is the existing statistics legislation framework?

3. There is no single source of law that regulates the collection, holding, processing, use and sharing of statistical information in the UK. Instead, it is governed by a number of different areas of law:

- Major Acts of Parliament about statistics (eg the Census Act 1920 and the Statistics of Trade Act 1947);
- Legislation (both Acts and Regulations) containing provisions about specific policy areas and the information associated with those policy areas;
- Specific provisions on confidentiality of information, especially those in the Data Protection Act 1998 and the Human Rights Act 1998;
- European Union law;
- Common law, especially regarding breach of confidence.

The sum of the existing legislation

4. It has been impossible, during the course of this study, to discover exactly how much legislation exists governing statistics. Searching for the word "statistics" through the Stationery Office's or Butterworth's registers of legislation on the internet is only part of the story. The legislation index provided by HM Stationery Office (covering Acts, Regulations, Orders and Explanatory Notes for the whole of the UK since 1988) lists 99 uses of the word in primary legislation (Acts), 100 uses in

secondary legislation (Regulations) and 19 references in Explanatory Notes. Many of these references relate, for example, to the granting of funds for the running of the Central Statistics Office through the Appropriation Acts or to the description of areas for licences for sea fishing under the Sea Fish Conservation Act, and so are not part of the general body of statistics legislation within the scope of this report. Among the references which **do** relate to the body of law on statistics are, for example:

- section 98 of the Electricity Act 1989, which allows the Secretary of State to obtain statistical information from people who generate or supply electricity;
- section 91 of the Value Added Tax Act 1994, which allows the Commissioners of the Inland Revenue to disclose information about people registered for VAT to, among others, the Department of Trade;
- section 64 of the Child Support, Pensions and Social Security Act 2000, which allows regulations to be made on the use and exchange of information between the Probation Services and the Benefits Agency;
- section 4 of the Gas Act 1995, which amends the Statistics of Trade Act 1947 to include references to the quantity and value of gas supplied in Great Britain.

5. From the list above, it can be seen that searching in different ways may produce other references to legislation on statistics. For example, references to primary and secondary legislation may appear by using the words "supply of information", "disclose information", "confidential information", "furnish returns", "restricted information". Searching just for the words "supply of information" in the HMSO web site produced over 1000 results, including:

- The Housing Benefit, Council Tax Benefit and Supply of Information (Jobseeker's Allowance) (Consequential Amendments) Regulations 1996;
- The Plant Breeders' Rights (Farm Saved Seed) (Specified Information) Regulations 1998;
- The Employment Act 2002;
- The Television Licences (Disclosure of Information) Act 2000; and
- The Water Act 1989.

6. No-one consulted during the course of this study had a complete overview of the extent of statistics legislation in the UK. Even members of individual Government Departments often do not know what legislation governs their work; among the members of the Government Statistical Service whom I met, few could quote the references to legislation under which they operate. There was enormous confusion about what might or might not be possible under the existing legislation. Interpretations of what may or may not be possible also vary among Government lawyers.

Powers of Government Departments which are not in legislation

7. It is not necessary for a Government Department to have explicit statutory powers to carry out its activities. Government Departments have a range of basic functions. The collection, use, and processing of information is often ancillary to these functions, and therefore is implicit in the legislative framework. Examples might include information on the numbers of recipients of certain social security benefits, although there is no express statutory power to collect it. Such information is often called "administrative data".

8. In addition, Government Departments headed by a Minister of the Crown (such as the Treasury, the Home Office, the Department for Education and Skills) have common law powers - the usual position is that the Crown has power to do whatever a natural person may do under the common law (unless the power has been taken

away by statute). In some areas there are additional specific powers that are unique to the Crown (prerogative powers) e.g. in relation to foreign affairs and defence. In contrast, some Government Departments are created by statute and not headed by a Minister (such as the Inland Revenue and Customs and Exercise) and these can only do what is expressly or implicitly authorised by statute. Local authorities are in the same position as non-ministerial Government Departments and can only operate under the legislation governing their activities.

Topics covered in the legislation

9. The legislation on statistics, or on the collection or use of data, often covers 3 specific topics, which are:

- Powers to obtain information, and/or requiring individuals or organisations to supply it;
- A requirement to keep information confidential, unless permission has been given to disclose it; and
- The offences which may be committed by those who do not supply information, who supply false information or who reveal it without permission.

In addition, sometimes the legislation allows those who hold data to charge for analyses of it.

10. Specific legislation on particular topics states why information is required and defines the information needed. The Statistics of Trade Act 1947 provides an illustration of the scope of statistics legislation in the UK:

- *Section 1 of the Act* allows Government Departments to collect information to understand economic trends, to provide a statistical service for industry and to allow them to carry out their functions, and requires people running businesses to respond. *Section 2* requires there to be regular general surveys of the state of trade and business, and *section 3* requires people to complete them.
- *Section 4* sets out the levels of fines which apply if someone is convicted of failing to respond to a requirement to supply information or supplies false information.
- *The schedule* to the Act lists the subjects about which companies may be required to provide information, and *section 5* of the Act allows the schedule to be added to or amended by Order.
- *Section 9* states that individual returns shall be kept confidential unless the Minister has directed that they can be given to a Government Department "for the purpose of the exercise by the Department of any of their functions".
- *Section 17* of the Act provides definitions, including the fact that an "undertaking" in the terms of the Act can include local and public authorities and non-profit-making businesses.

Key areas where existing legislation impacts on the work of the Government Statistical Service

11. From the above list, it is clear that the existence or lack of legislation is most likely to affect the Government Statistical Service in two main respects:

- there may not be powers to collect the information which the Government needs to carry out its work;

- the legislation (especially provisions on confidentiality) may prevent different data sets being brought together, or data being used for different purposes than that originally intended.

These two issues, which will form the main focus of the rest of this report, require amendments to be made to the legislation each time they occur in order to allow the Government Statistical Service to carry out its functions. The quantity of existing legislation on statistics, which has been referred to above, is partly the result of this continuous stream of amendments. The second of the two issues is causing most difficulties at present.

12. During the course of this study, some of those consulted (see list at Annex 1) referred to powers to charge fees for statistical analyses. This was not seen as a current constraint on the work of the Government Statistical Service (perhaps because income received by Government Departments does not directly benefit those working in particular areas in the Department, such as on statistics), but is a topic which should be considered if new statistics legislation is being contemplated. One respondent also mentioned the constraints on his work resulting from intellectual property rights and from a Trading Fund Order. A short note on charges and on intellectual property rights is at Annex 2.

How constraints are handled in practice

13. The Government Statistical Service has found a number of ways of handling particular constraints which have arisen in recent years. In particular, it has:

- introduced amending legislation (which has had the effect of increasing the confusion, both for the general public and for Government Statisticians, about what the law actually permits in any particular case);
- devised protocols (sometimes of dubious legality) to permit data-sharing;
- seconded staff to another organisation to allow access to its data, or appointed staff jointly between two or more organisations to enable them to bring data sets together;
- enabled the staff of one organisation to work on the premises of another in order to access the data held by the second organisation (which may also be of dubious legality).

Drivers for change

14. The constraints caused by the existing legislation have been highlighted in recent years for a number of reasons:

- the current Government's focus on cross-cutting issues, which fall between the responsibilities of a number of different Departments, has heightened the need for those Departments to share and pool data;
- technological developments mean that data can now be manipulated and matched in ways which would not have been practicable in the past;
- the Government's objective of targeting services better towards those who most need them has resulted in a drive towards more specific data sets, and in particular, data relating to small areas -- this has heightened the need for central and local government to work together and to share data;
- the functions of Government are increasingly being carried out, not directly by Government Departments, but by a range of other public bodies, which may need powers to collect and use information and to share data previously collected by the "parent" Department;
- the privatisation of some services may mean that legislation is needed for the collection of data which was previously collected from the public sector.

Powers to collect information

a) From individuals

15. Most information about individuals required by Government is collected from administrative systems. There is, therefore, relatively little legislation which requires individuals to supply information to Government or public bodies. Exceptions include The Census Act 1920 (under which Regulations may require people to make returns); the Population (Statistics) Act 1938 (section 1 of which requires individuals to supply information about births, still-births, or deaths), and Part II of the Council Tax (Administration and Enforcement) Regulations 1992 which requires residents, owners or managing agents of particular buildings to provide information about liability for the tax. Individuals in contact with Government services, such as the social security system or the National Health Service, voluntarily supply information about themselves in order to obtain the services they need, and not for statistical purposes. The subsequent collation of the data for statistical purposes is often implied by the legislation, rather than specified. Members of the Government Statistical Service consulted during the course of this study did not mention any difficulties in obtaining basic data about individuals.

b) Collecting information for surveys

16. The response rate to voluntary surveys, such as the Family Expenditure Survey or the British Crime Survey, has been falling and this affects the quality of the information obtained. It has been argued that such surveys should be backed by a requirement to supply the information, as is the case in many other countries.

c) From organisations

17. The most common legislative powers to require the supply of information relate to organisations, usually in the private sector. As an example, The Statistical Returns (Carriage of Goods and Passengers by Sea) Regulations 1997, made under section 2 of the European Communities Act 1972, state:

"The Secretary of State may require by notice in writing any person carrying on business or trade in the maritime transport sector or any harbour authority to furnish, in such form and manner and within such time as may be specified, such periodical or other returns about such of the matters set out in the Schedule to these Regulations in relation to the carriage of goods and passengers by seagoing vessels as may be specified."

The Schedule to these Regulations lists in great detail the information which may be required, including the weight and type of cargo, number of containers, number of passengers, ports used and details of the vessel.

18. As well as transport organisations, legislation requiring the supply of information covers independent hospitals, schools, private and voluntary care homes, nursing agencies, and utility companies, among others. Under section 537A of the Education Act 1996, for example, the Department for Education and Skills has powers requiring the governing bodies of schools to provide information about pupils to Local Education Authorities. Regulations such as The Education (Information about Individual Pupils) (England) Regulations 2001 are made under section 537A, and those Regulations apply to maintained schools, academies and non-maintained special schools, including religious schools, which are required to supply detailed

information on each pupil, including those with special education needs, receiving free school meals, and taking examinations. Members of the Government Statistical Service consulted in the course of this study recognised that the lack of legislation to require the supply of information was, or could be, a constraint upon their work. Some commented that it was common to use other levers to obtain the information needed -- for example, information is collected by the Home Office from privately-run prisons under the contract through which each prison is funded, and information is collected by local authorities from transport companies, who may have to supply it in order to receive subsidies for, for example, concessionary fare schemes.

19. The Health Statistics Users Group has expressed concern to Health Ministers about the lack of information collected from the private health sector, which did not allow anyone to assess whether that sector offers high standards for patients or good value for money for the taxpayer. The Group believes this issue to be of particular importance in the context of introducing intermediate care beds, so that their use, and their impact on use of acute beds in the NHS or the private sector, could be monitored. In fact, The Care Standards Act 2000 requires the private health sector to supply information to the National Care Standards Commission -- and, because this is an area in which new public bodies are currently being created, The Health and Social Care (Community Health and Standards) Act 2003, which has recently passed through Parliament, transfers the function of collecting this information to the new Commission on Health Audit and Inspection and the Commission on Social Care Inspection. These bodies, under section 103 of the new Act, will also have the duty of making information about the independent healthcare sector and registered social care agencies in the private and voluntary sector available to the public.

20. Sometimes it is not clear whether the powers are available in primary legislation to collect information which is needed by the Government Statistical Service. In the course of this study, the Home Office indicated that they might, in future, see a need to collect information about "non-prison corrections" -- such as parenting classes, which the parents of young people, who have committed minor crimes, such as vandalising property, may be required to attend.

21. It seems clear that a general order-making power to require organisations to supply information for policy-making or statistical purposes, would assist the Government Statistical Service in carrying out its responsibilities. The power in primary legislation could allow the Secretary of State concerned to make regulations specifying what information was needed, and from which organisations. The regulations made under the primary power could, as a safeguard, be subject to the affirmative resolution procedure, so that on each occasion that regulations were needed they would have to be debated in Parliament.

Confidentiality, data-sharing and data-matching

22. This area of the legislation seems to be causing more problems than any other. It is also an area where Government Departments have recently taken steps to legislate to remove problems; where there is a lack of clarity about what the legislative position actually means (including, sometimes, among lawyers working for different Departments) and where the actual position is in fact enormously complex.

The legal provisions on confidentiality

23. There is no dispute that legal provisions to protect sensitive information about individuals and to protect commercial information about organisations are necessary. The provisions which exist include:

- those in statistics legislation (such as section 9 of the Statistics of Trade Act 1947, which governs the confidentiality of information about businesses and other organisations collected under that Act; section 8 of the Census Act 1920, which governs the confidentiality of census information; and section 4 of the Population (Statistics) Act 1938);
- specific legislation in the Data Protection Act 1998, which relates only to living individuals, and which protects much of the data collected for administrative purposes within the functions of particular Government Departments;
- provisions in a wide variety of other Acts and Regulations, such as those concerned with taxation;
- those in the common law, and particularly provisions relating to the obligations of particular professions, such as the medical and nursing professions and social workers.

24. In May 2002, the Lord Chancellor's Department produced a list of statutory provisions concerning disclosure of information. The list was produced because, under section 75 of the Freedom of Information Act 2000, there was an obligation to review any legislation which appeared to be capable of preventing the disclosure of information under that Act. The list contains legislation in both Acts and Regulations which requires information to be kept confidential. Replying to a Parliamentary Question on the issue, the Lord Chancellor said: "We have identified 155 items of primary legislation and 83 items of secondary legislation that contain provisions prohibiting the disclosure of information. We have also identified a further 62 items of primary legislation and 18 items of secondary legislation which contain provisions providing discretion to disclose information. We have identified 36 items of legislation to be repealed or amended under the provisions of section 75 of the Freedom of Information Act 2000. 57 items of legislation have been identified which fulfil our international obligations. It will be necessary to retain these."

25. It has been argued that most confidentiality provisions in UK legislation, where they exist, are inadequate for the protection of members of the public. In many countries outside the UK legislation goes much further: providing, for example, assurances to individuals that identifiable data will be confined to those (and only those) who need access for statistical purposes. In other words, the legislation provides protection from breach of confidence within government itself. This exists in the UK in only a few circumstances, such as the Finance Act 1999.

Constraints caused by the provisions on confidentiality

26. During the consultations for this study, two items of legislation on confidentiality were mentioned as causing particular constraints on the work of the Government Statistical Service. Both are concerned with taxation.

- Statisticians in the Inland Revenue commented that there was no good-quality academic research on taxation issues, because much of the basic data could not be made available to academic organisations. Section 182 of the Finance Act 1989 and section 6 and schedule 1 to the Taxes Management Act 1970 make it an offence for a person to disclose any information which he holds, or has held, in connection with the exercise of his tax, tax credit or social security functions. The way that the provision in the Finance Act 1989 is worded means that information cannot even be passed freely within the Inland Revenue, and can only be used by those who have it because of the work they do.

- The prohibition in paragraph 17 of schedule 2 to the Local Government Finance Act 1992 on the use of council tax data for secondary purposes has prevented personal, identifiable information being used in other parts of the same local authority (and also from being passed to others outside the local authority for statistical purposes). The paragraph in question states: "*(1) Regulations under this Schedule may include provision that an authority*
(a) may supply relevant information to any person who requests it for a purpose not relating to Part I or II of the Act; and
(b) may charge a prescribed fee for supplying the information.
(2) For the purposes of sub-paragraph (1) above, information is relevant information if-
(a) it was obtained by the authority for the purpose of carrying out its functions under Part I or Part II of this Act; and
(b) it is not personal information."

The Information Commissioner has advised that, since this paragraph prohibits regulations allowing for the supply of personal information, all disclosures of personal information for non-council tax purposes are prohibited. This means, for example, that the planning department of a local authority cannot obtain information about vacant properties which has been collected by the same authority for council tax purposes in order to assist it in developing unused properties in an area. In the consultations for this study, the Office of the Deputy Prime Minister mentioned the difficulties they were encountering because of the wording of this section, in bringing together information from the Valuation Office with information about vacant properties in local authority areas.

Data-sharing about organisations

27. Some of those consulted during the course of this study commented on difficulties they had encountered in obtaining or sharing information about organisations. For example, the Department of Trade would like to bring together information on companies from the Business Register with data from Customs and Excise on imports and exports. They said that both Departments had consulted their lawyers and that these had interpreted the legislation in different ways.

28. The Inland Revenue explained that they had encountered difficulties obtaining information about companies' research activity from the Office for National Statistics. The Statistics of Trade Act 1947 (section 9) prohibits the disclosure of individual returns and information relating to individual companies obtained under the Act except "*in accordance with directions given by the Minister in charge of the government department in possession of the information to a government department for the purpose of the exercise by that department of any of their functions.*" The relevant Minister in this case is the Chancellor of the Exchequer, who has delegated his power to make directions under this section to the National Statistician. It appears that the difficulties which some Departments have been encountering stem from the processes which have been put in place by the Office for National Statistics to ensure that confidentiality is protected and that returns are only released for the purposes permitted under the law. ONS admitted that their micro-data release panel had taken longer than it should have to reach decisions on the release of information and that the process had now been changed in order to provide a speedier result. They also said that, so far, no requests to obtain information had been turned down.

Data-sharing about individuals

29. In April 2002 the Cabinet Office's Performance and Innovation Unit published a report on the ways in which information held by the public sector -- including personal data on individual citizens -- could be used more effectively and efficiently, including sharing some of that information across organisational boundaries, to help in the delivery of high quality services and the development of well-targeted policies. The five-point strategy proposed in the report included elements designed to achieve greater clarity of the legal framework, and consultation on possible legislative changes to establish data-sharing gateways.

30. Recognising that this is a subject which has caused considerable confusion, the Department for Constitutional Affairs, which is now responsible for carrying forward the recommendations in the PIU report, has produced guidance entitled "Public sector data sharing: guidance on the law", which was published on 24 November 2003. The guidance is specifically targeted at lawyers and other interested professionals working in the public sector. It is, perhaps, an indication of the complexity of the issues that the guidance extends to 37 pages. The guidance recognises that the legal framework on this topic is complex and overlapping.

31. The guidance includes a checklist of the key legal considerations relating to data-sharing, which are:

- Whether the organisation that is to hold and administer the shared database has the legal power to do so (which either may be statutory, implied by the existing law, or under common-law);
- Whether the data that is to be shared is subject to legal restrictions, whether express or implied (e.g. sharing of information relating to council tax could be subject to a legal prohibition);
- Whether the information to be shared is confidential or was provided in circumstances giving rise to an obligation of confidence;
- Whether the Data Protection Act 1998 applies, and if so, whether the data sharing might be allowed under the conditions in its schedules.

32. There is no single source of law that regulates data sharing in the public sector. The sharing of data about individuals may be governed by specific legislation or by the provisions of the Data Protection Act 1998 and the Human Rights Act 1998. [The last piece of legislation (article 8) prohibits "*interference*" with an individual's private and family life, his home and his correspondence. It can be argued that, as far as statistics are concerned, this should not be an issue - since the purpose of matching the records of individuals is normally to produce correlated statistics - and not to take administrative or other action affecting the individual concerned.]

33. Now that the guidance has been published, DCA's priority is to establish exactly what can be accomplished within the existing legal framework, and to establish how far there is a case for a new gateway power to allow data-sharing. DCA's future action will therefore focus on:

- providing further guidance on how to establish protocols between Departments/organisations allowing data sharing;
- providing examples on their web site of data sharing which is possible within the existing legislative framework;
- providing training for key officials who need to know more about data sharing, e.g. for lawyers working in local authorities;
- getting agreement between the legal advisers in a range of Government Departments on exactly what is legally permissible at present and what is not

(e.g. because there is currently disagreement on whether arrangements such as joint appointments are legal or not).

34. There is a clear distinction between data-sharing gateways for administrative purposes (i.e. to improve coordination between services for the benefit of individuals) and those required for statistical purposes (e.g. to create the data sets to improve policy-making in cross-cutting areas). Achieving gateways for the latter purpose may be presentationally easier. Amending legislation for statistical purposes would solve a number of current problems. It might be helpful to consider a range of safeguards which could also be incorporated within any future legislation, for example, establishing some form of ethics committee to deal with proposals for data-matching, and placing a statutory obligation on the individual officers with access to the data set being matched not to disclose the information to anyone else. (This could mirror the existing sections in tax legislation which apply to individual tax officers and which prevent them from telling others, even within the Inland Revenue, about individuals' tax affairs). European legislation would probably mean that there would need to be a new data controller for any matched data sets, and this responsibility could be placed, for example, with the Office for National Statistics.

Data-sharing for administrative action

35. In some circumstances the only way that a proposed activity which involves data sharing can be carried out by the Government is by passing new legislation. A number of new pieces of legislation have recently been enacted which specifically permit data-sharing. In the main, these have been designed to allow a number of organisations to share individual records, and to reduce the burden on individuals who might otherwise need to supply the same information to a number of different agencies. Section 115 of the Crime and Disorder Act 1998, for example, specifically allows the disclosure of information between the police, the local authority, the probation committee and the health authority for the purposes of that Act (e.g. to deal with criminal behaviour by young people).

36. A major exercise has recently been undertaken by the Department for Work and Pensions to create a database of individual records which links records on social security benefits, child benefit, tax credits, employment and training. Legislation has been used to create a one-way legal gateway (it allows the Inland Revenue to pass information to DWP, but does not permit the DWP to pass information in the other direction). In total, references in five different Acts of Parliament have been required, including the 1998 Social Security Administration Act, the 1992 Social Security Administration Act, the Tax Credits Act 2002 and the Employment Act 2002.

37. The Department for Work and Pensions will use this database both for compliance (e.g. to check against social security fraud) and for research. It will allow better targeting of social security resources and better policy-making. For research purposes, the Department intends to encrypt the national insurance number (which is the individual identifier) before passing the individual records to analysts or outside researchers under contracts or service level agreements. This will allow the data to be used, for example, for work on social deprivation. The Department for Work and Pensions is also considering a range of options, to create better links between its data and that held by the Inland Revenue, including, as an interim measure, using joint employment contracts, to allow members of staff belonging to both Departments to access data on benefits and taxation.

38. The DWP have recognised that the establishment of this database involves considerable ethical issues, and as a result they are setting up an ethics committee (including representatives of the legal profession, of employers, of professional interests and experts in individual rights) to monitor the use of the data. It is debatable whether the implications of the legislation are clear to the public. (When signing to claim a social security benefit, claimants also sign to recognise that the data they provide may be linked with that from other Government Departments, although it is not made clear which Departments, and which records, are involved.)

39. In creating their database, the Department for Work and Pensions has recognised the importance of freedom of information issues. A list of the data available as a result of the exercise -- anonymised to prevent any individuals being identified -- will be accessible to researchers, interested members of the public and others over the Department's web site.

Data-sharing for research

40. The Department of Health has promoted new legislation -- the Health and Social Care Act 2001 -- governing confidential information about identifiable patients and setting out the circumstances in which it might be disclosed without the patient's consent. These include public health, research and statistical purposes, in the interests of improving the care of patients or in the public interest. Section 60 of the Act allows regulations to be made governing how information may be used, who it may be disclosed to, and in what circumstances.

41. The Department of Health sees this legislation as an interim measure. The Department is very conscious of the needs of medical confidentiality and has established a Patient Information Advisory Group to consider applications from medical researchers. In the longer-term, the Department aims to use coded identifiers on otherwise anonymised individual records to avoid those records being linked to an individual patient. The Department also believes that consent should be sought before individual patient data is disclosed to third parties, unless statutory provisions apply or there is a real public interest justification for disclosure.

Statistics needed for cross-Governmental work

42. Members of the Government Statistical Service consulted in the course of this study mentioned a number of areas where they would like to link databases, using individual records, to produce information needed for the development of policy on key cross-cutting issues, but this had proved either extremely difficult or impossible. Some of these policy areas included links between:

- teenage pregnancy and educational achievement;
- suicides and incomes on farms;
- drug/substance abuse and offences committed;
- educational attainment and receipt of social security benefits;
- indices of social deprivation, e.g. receipt of social security benefits, educational achievement, experience of crime.

43. Further issues have recently arisen because of machinery of government changes. The expansion of the work of the Department for Education and Skills to cover all children's issues has raised the question of whether that Department can now legally collect and use all data about children which previously was the responsibility of other Departments. For example, the DfES now needs the power to collect and share information about children in contact with social services,

previously within the remit of the Department of Health. Normally, since each Government Department has a single data controller for the purposes of the Data Protection Act 1998, information within that Department can be shared and reprocessed as necessary. However, it is not yet clear whether this sharing is governed by separate legislation and whether the rules which apply to Government Departments also apply retrospectively to data which has been collected in the past.

Forthcoming developments

a) Data sharing/matching

44. The report in April 2002 from the Cabinet Office's Performance and Innovation Unit recognised that not all of the current problems arising on data sharing/data matching can be solved within the existing legislative framework. As suggested in that report, it may be necessary at some point to introduce a Bill to enable legislative gateways to be created for data sharing. This could be achieved by creating a regulation-making power in primary legislation; secondary legislation would then set out the particular circumstances in which data sharing would be permitted in each case, and between which organisations.

45. There is an argument that any legislation brought forward should distinguish between sharing for administrative purposes (e.g. to seek compliance for taxation or benefits legislation, which would require the use of the merged individual records), and matching data with the aim of producing an anonymised, correlated data-set for statistical purposes. Modern technology now permits a great deal of the work of correlating individual records to be carried out by computers to produce statistical outputs which do not permit any individual to be identified. Carrying out this task for the purpose of developing Government policy seems to be a different matter from linking records for purposes which entail a wide range of information about a given individual being known to a variety of different Departments/services for compliance.

b) Citizens Information Project

46. The Office of National Statistics has been considering the establishment of a database of all citizens in the country. This might draw on records of births, marriages and deaths already held by the Registrar General, and/or on census records. Creation of such a database would need primary legislation. Such a database could be used, not only for statistical purposes, but also to simplify for individuals the process of interaction with Government. For example, it might prove to be a route whereby an individual who moved house would only need to make one notification of his or her change of address - and the information would be transmitted to all parts of Government providing services. Linking, coupled with stringent requirements on confidentiality, would not only benefit the individual citizen who would then be able to reduce the amount of form-filling needed to access different services, but could also benefit the Government Statistical Service. For statistical purposes, the amount of information needed, and the cost, of completing voluntary surveys could be reduced by means of identifiers, which would link survey responses to data previously provided by the individual concerned (e.g. on his/her place of residence, sex, ethnicity and age). There has been little public debate on the extent to which the benefits of such a database might outweigh the disadvantages. A major concern would be the desire of most individuals to keep their information private. However, surveys carried out for the Office of the Information Commissioner have revealed that most members of the public already believe that information they provide to one part of Government is accessible to all Government Departments and services.

c) Identity Cards

47. Government proposals for primary legislation, announced in November 2003, to bring in identity cards to substitute for the current driving licences and passports, initially on a voluntary basis, are being taken forward by the Home Office. Draft legislation will be published early in 2004 and this will contain, among other things, the powers necessary to set up a database and to obtain information for checking purposes from other sources.

48. The identity card project is designed for administrative/management purposes, and not for statistical purposes. However, it will have considerable implications for statistics, in particular:

- the eventual database will form, within about ten years, an almost complete and a totally up-to-date record of all adults in the country, containing names, addresses, and date of birth as a minimum -- this could then be used for other important statistical/policy-making purposes;
- the system will require data matching and links with existing data sources, for the purposes of checking identity;
- there may be a need for an ethical watchdog to protect the interests of the public and individual confidentiality when information is being matched with that from other sources;
- the project throws doubt on the need for a separate Citizens Information Project, as currently proposed by the Office for National Statistics.

49. The Home Office are conscious of the need to check people's identity before cards are issued and intend, initially, to make use of existing passport/immigration data already held in the Home Office to do this, as well as data on existing driving licences currently held by DVLA. To achieve this, the legislation will need to give the Home Secretary powers to access the DVLA's data (and that held by the separate Northern Ireland Driver and Vehicle Licensing Agency). In addition, there is a possibility of making checks on identity by using data held by the social security benefits system, the National Health Service, the register of births, marriages and deaths and/or by credit reference agencies. Checks made to establish identity are clearly in the public interest; equally, there will be a need to balance this with the requirements of individual privacy.

50. The data controller for the new data set covering identity cards is likely to be the Home Secretary. The Home Office's current proposals are that the identity card database should be kept "clean" and used for establishing and checking identity only. Information held on it would consist only of that drawn from applications for identity cards. The database would be used for authorisation purposes (in the same way that credit cards are often authorised now) by both public and private services. For example, it could be used to check eligibility for NHS treatment (e.g. following an accident). The main purpose of these checks back to the main database would be to prevent the use of stolen or fraudulent identity cards.

51. There are no current plans to use the data on this new database (which, even if the issue of identity cards is limited to driving licences and passports only, will soon amount to some 80 percent of the population), for statistical or policy-making purposes. The database will need to contain the name, address, and date of birth of each individual who has applied for a card (and also previous addresses). Whether other information will be included has not yet been decided.

52. It has also not yet been decided whether other agencies apart from the Home Office will be able to access the Home Office's database for their administrative purposes -- e.g. to check an individual's latest address or to clean their own data. The Home Office has not yet decided what numbering system will be used on the identity card database -- the most likely systems are a either completely new system, the national insurance number, currently used for social security benefits purposes and for contributions and tax, or the national health service number, which is also a comprehensive record of most individuals in the country. The Home Office database could in future have a number of administrative uses across central and local government (eg to check liability for Council Tax) -- and might also be used as a central record to avoid individual members of the public having to provide, for example, their new address to a large number of different agencies

53. It is also not yet decided whether the new database might be used to generate statistics. There is a need in a number of Government Departments for data-matching using individual records for purposes such as neighbourhood renewal data, which could demonstrate whether the same individuals are poorer, have low educational attainment, have children attending the worst schools, experience most crime, etc. These prospective uses of the new database will need to be considered before the legislation is finalised.

54. Much of the detail of the policy on identity cards is not yet determined, and the Government plans a consultation period on the draft legislation, starting early in 2004.

55. The Home Affairs Select Committee will be looking at the issue of identity cards over the next few months. Written evidence has been requested by the Committee by 5 January 2004.

Impact of these developments

56. The identity card project will add another national database of individuals to those which already exist, such as the database of social security recipients, the National Health Service database, and the Register of births, marriages and deaths. Links between databases created by different Government Departments are being established all the time, for very good administrative and statistical reasons. But the end result is likely to be that individual members of the public will have no idea where, within Government, personal data on them is held, whom to approach to check that the data is correct and, if not, how to put it right, on all the affected databases. The Office of the Information Commissioner, one of whose roles is to act as a watchdog over the confidentiality of data on individuals, is concerned that the public has the right to be informed about where data is held, and particularly when data sets affecting individuals are brought together. In addition, instead of the growing number of national and linked databases, the processing of the data should be done, in an ideal world, in a single place where its security is guaranteed. This would argue for bringing together the proposed identity card database, the Citizens Information Project, the database held by the DWP, and some others - and for making any data-matching away from the single national database illegal.

Conclusions

57. It is clear from this study that the legislative framework for work on statistics within Government is a source of a considerable amount of confusion. Government Statisticians frequently do not know whether work which they wish to carry out to assist in the development of government policy is within the legislation or not. This is particularly the case for the legislation on the confidentiality of individual data. Apart

from the confusion, there is a need for amending legislation to permit data-sharing in circumstances which are currently impossible, both for administrative and for statistical purposes. It may be considered desirable to distinguish between data-sharing for administrative purposes and that for statistical purposes, since the latter does not pose such a threat to the privacy of the individual. The legislation could also include safeguards, such as a requirement to set up an ethical watchdog to monitor proposals for data matching affecting the privacy of individuals and their families. If legislation is being considered, the opportunity should also be taken to look at wider needs for data, such as a power to require the production of information for statistical purposes.

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LIST OF THOSE CONSULTED IN THE COURSE OF THIS STUDY

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Tim Holt	Royal Statistical Society
Peter Bloomfield	Office of the Information Commissioner
Michael Jennings	Central-Local Government Information Partnership
Deana Leadbeter Margaret Eames	Health Statistics Users Group

Annex 2

A. CHARGES FOR STATISTICAL ANALYSES

Some of the current statistics legislation allows charging for statistical analyses; for example, the Office of National Statistics can charge for some analyses under the Census Act 1920.

In general, Government Departments do not have such powers; where they do, they make little use of them. The lack of powers to charge was not seen as a current constraint by members of the Government Statistical Service.

There is however some pressure to permit charging by statisticians in Local Government. Local authorities believe that they hold a considerable amount of tradable information which would find a market among commercial companies, and which could generate income.

B. INTELLECTUAL PROPERTY RIGHTS

The Office of the Deputy Prime Minister mentioned, during the consultations for this study, the difficulties they are encountering in producing a register of brownfield sites by geographical location. The problems have arisen because the Ordnance Survey, operating under a Trading Fund Order, made under the Government Trading Funds Act, which requires charges to be made to meet costs, was not able to supply the geographical co-ordinates needed to enable the register to be drawn up. Ordnance Survey argued that it had intellectual property rights over this information.