CC: DAS/JS/MG/TI/NI/LJ RJT 15

Department for
Constitutional Affairs
Justice, rights and democracy

RECEIVED
27 JUL 2006

The Rt Hon Lord Falconer of Thoroton
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Mr Richard Thomas
Information Commissioner
Information Commissioners' Office
Wycliffe House
Water Lane, Wilmslow
Cheshire SK9 5AF

29th July 2006

Dear Richard,

CONSULTATION PAPER ON CUSTODIAL PENALTIES FOR BREACHES OF SECTION 55 DATA PROTECTION ACT 1988

Thank you for sending me the final version of your *report 'What price privacy? The unlawful trade in confidential personal information'* which has been an extremely valuable contribution on this issue. I found the reports conclusions to be compelling and I believe that the very positive reaction to its publication indicates that there is broad public support for taking action.

As we have discussed in the past and again in our meeting today, I have responded positively to the recommendations by publishing a consultation paper on proposed custodial penalties for breaches of section 55 of the Data Protection Act 1998. In an environment where concerns about identity fraud are growing and where the widespread use and exchange of data is increasingly important to the economy and to society as a whole, it is essential for people to be confident their personal data will not be wilfully or recklessly abused and I am determined to ensure that the regulatory regime properly reflects the risks that come with greater data use.

In line with the recommendations of your report, the object of our proposal is to provide an appropriate and effective level of deterrent for those who seek to profit from the illegal trade in personal information. My officials worked with your office in the development of this consultation document and will continue to do so to take this issue forward.

The consultation document is now published and it will, I hope, make clear the government's determination to take seriously threats to individuals' privacy. A copy is attached and I would welcome your input into the consultation.

LORD FALCONER OF THOROTON

RJT 15

Increasing penalties for deliberate and wilful misuse of personal data

Consultation Paper
CP 9/06
This consultation will end on 30/10/2006

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Department for
Constitutional Affairs
Justice, rights and democracy

Increasing penalties for deliberate and wilful misuse of personal data

A consultation produced by the Department for Constitutional Affairs.
This information is also available on the DCA website at www.dca.gov.uk

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Increasing penalties for deliberate and wilful misuse of personal data

Contents

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Foreword

As the Government moves to an era of greater data sharing - to deliver better, more customer-focussed services and to protect the security of both individuals and society as a whole - it is essential for people to be confident that their personal data will not be wilfully or recklessly abused.

Greater data sharing and proper respect for individual's privacy *are* compatible. One of the essential ways of maintaining that compatibility is to ensure the security and integrity of personal data once it has been shared.

We are consulting on possible amendment to the Data Protection Act 1998 ("the DPA") to provide an appropriate and effective level of deterrent to those who seek to profit from the illegal trade in personal information, and to those who otherwise wilfully or recklessly give out personal data to those who have no right to see it: for instance, those who sell such information to private investigators and journalists.

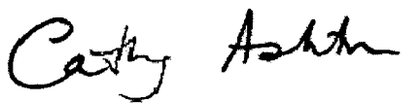
We are proposing to increase the penalties available to the Courts to enable those guilty of offences under s55 of the DPA to be imprisoned for up to 2 years on indictment and up to 6 months on summary conviction (subject to section 154 of the Criminal Justice Act 2003 coming into force). This is in addition to the fines previously available to the Court.

We want to make absolutely clear that this does **not** mean penalising front-line public sector staff who, while sharing data for legitimate reasons, make an error of judgement in what are often marginal and complex cases. For instance, where a practitioner who shares data in order to protect a child, doing so in the reasonable belief that they have the right in law and having made the judgement that it is necessary to do so, subsequently finds out that the information should not have been shared, will **not** be guilty of an offence under section 55. Likewise a staff member who is deceived into giving out information will not be guilty of an offence.

What this does mean is that those who abuse the trust placed in them by their employers, or those who cajole information from organisations (whether public or private sector), will face penalties appropriate to their offence.

Increasing penalties for deliberate and wilful misuse of personal data

Greater data sharing within the public sector – if we get it right - has the potential to be hugely beneficial to the public, as individuals and to society as a whole. Hand in hand with this is the need to provide real reassurance that when personal data is shared, the Government is determined to ensure both its security and integrity.



Cathy Ashton

Executive summary

The government has been increasingly concerned about the apparent increase in the trade in personal data, as highlighted in the Information Commissioner's recent report to Parliament '*What Price Privacy? The unlawful trade in confidential personal information*'.

The current penalties contained in section 60 of the Data Protection Act 1998 (the DPA) do not provide a sufficiently strong deterrent to those who seek to profit from the illegal trade in personal information. The ICO's report details the money which can be made in illegal transactions – highlighting a single person invoicing other organisations for up to £120,000 per month for positively tracing the whereabouts of individuals[1]. Those engaged in such a potentially profitable trade will not be deterred by a fine.

The government proposes to amend section 60 of the DPA to increase the penalties available to the Courts. Currently section 60 provides for:

- On summary conviction, a fine not exceeding the statutory maximum (currently £5,000); and
- On conviction on indictment, to a fine (which is unlimited).

To deter people from trading in personal data, the government proposes to amend section 60 of the DPA to allow for, in addition to the current fines,

- On summary conviction, up to 6 months imprisonment (which will be increased to 12 months imprisonment in England and Wales when s154 Criminal Justice Act 2003 comes into force); and
- On conviction on indictment, up to 2 years imprisonment.

This consultation paper seeks views on whether:

- this is a proportionate sanction for the courts to be able to use, and

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[illegible]

- would act as an effective deterrent to those who unlawfully trade in and otherwise deliberately or recklessly misuse personal information.

Introduction

This paper sets out for consultation proposals to amend the Data Protection Act 1998 to allow for custodial sanctions for those convicted of offences under section 55 of that Act. The consultation is aimed at the general public and relevant organisations in the UK.

This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The Consultation Criteria, which are set out on page 28, have been followed.

An initial regulatory impact assessment indicates that costs to the DCA are likely to be particularly affected. A Partial Regulatory Impact Assessment is attached at page 20. Comments on this Regulatory Impact Assessment are particularly welcome.

Copies of the consultation paper are being sent to:

Association of Chief Police Officers

Association of Chief Police Officers for Scotland

Bar Council

British Bankers' Association

British Dental association

British Medical Association

Call Credit

CIFAS

Council of Circuit Judges

COSLA

Crown Prosecution Service

Crown Office and Procurator Fiscal Service

Increasing penalties for deliberate and wilful misuse of personal data

Department for Communities and Local Government

Department for Education and Skills

Department for Health

Department for Trade and Industry

Direct Marketing Association

Driver Vehicle Licensing Agency

Equifax

Experian

Faculty of Advocates

Financial Services Authority

General Medical Council

HM Revenue and Customs

Identity and Passport Service

Information Commissioner's Office

Law Society

Law Society of Scotland

Legal Services Commission

Liberty

Local Government Association

Magistrates' Association

Market Research Association

Ministry of Defence

National Association of Citizens' Advice Bureaux

National Union of Journalists

National Association of Data Protection Officers

Northern Ireland Office

OFCOM

OFGEM

Press Complaints Commission

Royal Mail

Scottish Executive

Scottish Legal Aid Board

Sheriffs Association

Society of Editors

Treasury Solicitors Department

Universities and Colleges Admission Service

Victim Support

Victim Support Scotland

Welsh Assembly

Which? (Consumers Association)

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

The proposals

Government is committed to ensuring that there is robust protection for personal data. These proposals are part of the government's wider strategy on data sharing, aimed at increasing public confidence in the sharing of personal data and deterring, and appropriately punishing, those who seek to profit from illegally trading in personal information. The government is keen to make the most effective use of the information that it holds and to promote the sharing of personal data across the public sector in order to increase efficiency and the development of more effective, targeted and personalised services, as set out in *Transformational Government*[2].

The Information Commissioner's Special Report to Parliament '*What Price Privacy. The unlawful trade in confidential personal information*' highlights the scale of the trade in personal information, and the corrosive effect that it has. The report details how much money those engaged in these transactions can make – up to £120,000 per month in one case. Those engaged in such a rewarding trade will not be deterred by a fine only.

Government wishes to facilitate greater data sharing within the public sector. To achieve this it is necessary to demonstrate the security of personal information once it has been shared. The government therefore believes it is necessary to increase the penalties available to the courts for three reasons:

- in order to provide a larger deterrence to those who seek to knowingly or recklessly disclose or procure the disclosure of confidential personal information without the consent of the data controller,
- to provide public reassurance that those who are successfully prosecuted may, dependent on the gravity of the offence, be sent to jail.
- to achieve parity of approach across a number of disparate pieces of legislation which deal with similar type offences.

Currently, section 55 of the DPA makes it an offence to obtain, disclose or procure the disclosure of personal information knowingly or recklessly without the consent

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[2] [illegible]

of the data controller[3]. The obtaining/disclosing or procuring without the consent of the data controller will not be an offence if the person can show:

- It was *necessary* for the prevention or detection of crime – for instance if the police approach a suspect's employer to ascertain whether or not they were at work on a particular day;

- It was required or authorised by statute, rule of law, or court order – for instance a person would not be guilty of this offence if a court had ordered the release of this personal data;

- That he/she acted in the reasonable belief either that he had a right in law to act as he did or that he would have had the consent of the data controller if they had known of the circumstances of the disclosing, obtaining or procuring – for instance a person will not be guilty of this offence if they are deceived into releasing the information and they were, at the time, acting in the reasonable belief that they had the right in law to release this information to that particular person; or

- It was, in the particular circumstances, justified as being in the public interest.

Section 55 (4)-(8) makes it an offence to sell or offer to sell personal data which has been (or subsequently is) obtained or procured knowingly or recklessly, without the consent of the data controller. An advertisement indicating that personal data may be available for sale constitutes an offer to sell data.

A person who wilfully obtains personal information by deception, ie. 'blagging' personal information from a bank or individual data controller, would be guilty of this offence. Likewise, an employee who knowingly obtained personal information from the employer's records relating to another and sold it to a journalist would be guilty of this offence. In that situation the employer would not be committing an offence under section 55 of the DPA. It is also unlikely that employees who mistakenly release information to 'blaggers' would be guilty of an offence – if they were at the time of releasing the information, acting in the reasonable belief that they had authority in law to act as they did.

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[3] [illegible]

Increasing penalties for deliberate and wilful misuse of personal data

The government's proposals are to amend section 60 of the Data Protection Act (which sets out the sanctions available to courts for DPA offences) to allow, on conviction under s55 of the DPA, for:

- Up to 6 months imprisonment (which will be extended to up to 12 months imprisonment when section 154 of the Criminal Justice Act 2003 comes into force) on summary conviction (that is, conviction in a Magistrates' Court or a Sherrif Court sitting without a jury in Scotland) and/or a fine of up to £5,000; and

- Up to 2 years imprisonment on indictment (that is, conviction in a Crown Court or in Scotland either before a sheriff and jury or in the High Court) and/or an unlimited fine.

Custodial sentences are the ultimate **deterrent** sentence that the courts are able to use. In addition, they will be able to sentence offenders to suspended sentences, (other than in Scotland) community sentences and licence conditions. These are all more onerous than simply fining offenders, and the government believes they will be a greater deterrent to those engaged in the trade in personal information than the current punishments. The benefits of sharing personal data are large – reduced administrative costs for businesses and the public sector, targeted services delivered speedily at lower end user cost. As more data is held and exchanged between public sector bodies, the opportunities for those seeking to either sell or illegally gain access to this data increase.

Government attaches real importance to personal data security and therefore to offences involving the unlawful procurement, sale or disclosure of personal information. That is why the Government is proposing that the penalties available to the court should be increased.

Equally it is essential to ensure that practitioners who, while sharing data for legitimate reasons make an error of judgement in what are often marginal and often complex cases, are not penalised. This offence does not apply to those who have made an error in judgement when sharing information to provide a better service to individuals. It applies for instance, to individuals who sell the personal information from (their employer's) databases, abusing their position of trust. It applies equally to those who attempt to gain personal information through deception – for instance by deceiving staff working in call centres for financial institutions or public sector organisations. It will not apply though to those who have been deceived, where at the time of releasing the information, they were acting in the reasonable belief that they had the authority in law to act as they did.

Similar offences

When considering the proposals for allowing for a custodial sentence, and the length of any sentence, the government has had regard to the sanctions available for similar type offences. Various pieces of legislation have, over a number of years, put in place custodial sanctions for the misuse of personal data in particular circumstances. For instance:

- The Identity Cards Act 2006 makes similar provision (section 27) for unauthorised disclosure of information from the National Identity Register (NIR) when it is implemented. During the passage of the Bill, the government highlighted the critical importance of maintaining the integrity of the NIR and the need for public confidence in the security of the data which they submit to the NIR. Section 27(5) of the ID Cards Act provides that those guilty of the offence of disclosing confidential information are liable on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

- Section 123 of the Social Security Administration Act 1992 includes a custodial sentence of up to two years in the Crown Court in England and Wales or solemn procedure in Scotland and up to six months in the Magistrates' Courts in England and Wales or summary procedure in Scotland for the misuse of personal data.

- The Commissioners for Revenue and Customs Act 2005 provides (s18(1) and s19(1)) that it is an offence for information held by HM Revenue and Customs for a function of HM Revenue and Customs to be disclosed by officials of that organisation unless certain conditions are met.

- Again, sanctions under s19 of the Commissioners for Revenue and Customs Act 2005 include imprisonment for up to two years in the Crown Court and up to 12 months in the Magistrates' Courts (in Scotland and Northern Ireland the maximum penalty in the summary courts is 6 months)

These pieces of legislation cover very specific offences relating to specific types of information. There is no single overarching standard sanction for misusing personal information which is applicable across both the public and private sector. The Data Protection Act 1998 is the central piece of legislation which governs how personal data should be processed. It should be the piece of legislation which sets the standards for offences relating to the wilful misuse of personal information. It is therefore only right and proper that it should enable the courts to have access to the same sanctions for the misuse of data as it would have for other similar offences.

Assessment of Usage

Section 55 offences do not often end up in court. The Information Commissioner's special report lists, at Annex A, the prosecutions he has taken forward in England and Wales since 2002. His office has taken forward 26 prosecutions in the last 4 years. Of these, the majority have been in the magistrates' courts, and only 5 have been of sufficient seriousness to warrant prosecution in the Crown Court. The government does not consider that the level of prosecutions will rise as a result of the creation of this new sanction as the offence is already in existence and has a prosecution history. From this it is possible to extrapolate the average potential prosecutions brought on an annual basis. We believe that the level of prosecutions will remain stable, based on the Information Commissioner's ability to take forward prosecutions.

The government is clear that prison should be reserved for serious, violent and dangerous offenders. For other offenders the courts have available a range of tough non-custodial sentences such as fines and community sentences. Our priorities are tough punishment, including in the community, and delivering what works in terms of reassuring the public and reducing re-offending.

In addition to fines and custodial sentences courts will be able to sentence offenders to community sentences. A court may impose a community sentence on any offender who has been convicted of a criminal offence where it judges that the offence is serious enough to warrant such a sentence.

Community sentences combine punishment with measures designed for changing offenders' behaviour and making amends. They can also encourage the offender to deal with any problems that make them more likely to commit crime. Community orders can include up to twelve different requirements, including unpaid work and curfews.

We would consider that those responsible for large scale abuse of personal data, or repeat offenders, would be more likely to receive a custodial sentence or a community order than those engaged at a lower level where a fine would be an appropriate punishment.

Costs

The government does not believe that its proposal to increase the penalties for offences committed under s55 will have an adverse impact on the courts or the Legal Aid budget. Whilst the possibility of a custodial sentence will increase the

likelihood of a defendant receiving criminal legal aid, the nature of the crime, being a generally white collar high profit crime, will mean that a number of defendants will fail the means test and not be eligible for legal aid. It is accepted that those cases serious enough to be prosecuted in the Crown court will be eligible automatically for legal aid in England and Wales. Legal aid in Scotland for DPS cases is subject to a financial eligibility test under summary procedure and a test of undue financial hardship under solemn procedure.

Given the caseload prosecuted over the last four years by the Information Commissioner's Office it is possible to extrapolate potential future costs on the Legal Aid budget. Taking best and worst case scenarios (where prosecution rate stays the same and where prosecution rate increases by 100%) it is possible to project that the extra burden on the Legal Aid budget would be between £3,000 and £34,000. The government considers that this is defensible, given the serious nature of the offence.

The potential increase in costs due to the need for potential offender management procedures – either custodial or licence conditions – has been estimated at between £5,500 and £35,800. This is based on one person per year receiving the minimum (best case) or maximum (worst case) sentence on summary conviction.

Sentencing Guidelines

The Criminal Justice Act 2003 established the Sentencing Guidelines Council (SGC). The role of the Council is to promote consistent sentencing; they are responsible for issuing guidelines on sentencing for all criminal offences in England and Wales.

As soon as time permits the council will consider how to frame comprehensive guidelines for all types of offences, including DPA offences. Where the SGC frames guidelines, it must publish them in draft, and must consult on them. After amending the draft guidelines as appropriate, the SGC then issues definitive guidelines. Courts in England and Wales are obliged to have regard to guidelines, and must give reasons if they depart from them.

Questionnaire

Question 1

Do you agree that custodial penalties should be available to the court when sentencing those who wilfully abuse personal data (i.e knowingly or recklessly obtain, disclose or seek to procure the disclosure of such data without the consent of the data controller?) Please give reasons for your answer.

Question 2

Do you agree that custodial penalties will be an effective deterrent to those who seek to procure or wilfully abuse personal data (i.e knowingly or recklessly obtain, disclose or seek to procure the disclosure of such data without the consent of the data controller?) Please give reasons for your answer.

Question 3(a)

Do you agree that the custodial penalties are of the right length?

Question 3(b)

If not, why not, and what do you suggest should be the maximum custodial penalty available to the courts (a) on summary conviction and (b) on conviction on indictment?

Question 4

Do you agree that a guideline issued by the Sentencing Guidelines Council is necessary for this offence in England and Wales?

Thank you for participating in this consultation exercise

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (eg. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	☐ (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

How to respond

Please send your response by 30 October 2006 to:

Carl Pencil
Department for Constitutional Affairs
Information Rights Division
6.18 Selborne House
54-60 Victoria Street
London
SW1E 6QW

Tel: 020 7210 8034
Fax: 020 7201 7777
Email: carl.pencil@dca.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at http://www.dca.gov.uk/index.htm

Publication of response

A paper summarising the responses to this consultation will be published in 6 months time. The response paper will be available on-line at http://www.dca.gov.uk/index.htm

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000

(FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Partial Regulatory Impact Assessment

1. Title of proposal

New custodial sanctions for breach of section 55 of the Data Protection Act 1998 (DPA).

2. Purpose and intended effects

To deter more effectively the wilful misuse of personal data by adding to the current fiscal sanctions a more severe but proportionate and consistent custodial sentence. This will help increase the willingness of members of the public to share personal data in the interests of legitimate activity including efficient government.

Background.

The DPA currently only allows for a fine for the misuse of personal data rather than a more serious sanction.

It is an offence to knowingly or recklessly, without the consent of the data controller:

- **disclose personal data**; (covering, for example, officials passing information to private detectives).
- **obtain personal data**; (covering, for example) private detectives obtaining information from officials.
- **procure personal data** (covering, for example journalists who pay private detectives to obtain personal data from officials).

The Information Commissioner's Special Report to Parliament, published on the 11 May, highlighted the extent of the illegal trade in personal information and the corrosive effects that this has on society. It recommends custodial sentences for offences relating to misuse of personal data. The government agrees with the Information Commissioners' Office (the ICO) that the current fiscal penalties available to the court do not act as a sufficient deterrent to those engaged in the illegal trade in personal information.

A number of pieces of legislation already allow for custodial sanctions for the misuse of personal data. Most recently, the ID Cards Act 2006 will allow for a custodial penalty of up to two years if personal data from the National Identity Register is misused. We believe that we will see this trend repeated in other pieces of legislation which involve the usage and storage of personal information. Amending the DPA will ensure that a single piece of legislation will tackle all offences relating to misuse of personal data to the same high standard.

There is growing public concern about the misuse of personal data. Recent cases such as the HMRC tax credit fraud and the release of personal data by the DVLA to car parking firms have highlighted the level of public concern and media exposure that personal information issues generate. Amending the DPA to allow for the option of a custodial sanction will provide public reassurance that the government is serious about protecting people from crime and upholding the individual's right to an appropriate degree of privacy.

3. Options

Option 1

Do nothing – leave the sanctions available to the court as they are at present.

Option 2

Increase the sanctions available to the court to allow for up to 12 months imprisonment, on summary conviction, and up to 2 years on indictment.

The government does not believe that it is appropriate to do nothing. It is important that there is consistency across all pieces of legislation which deal with offences of this nature. The current trend to move to custodial sanctions, as highlighted by the Identity Cards Act 2006 and the Commissioner for Revenue and Customs Act 2005 make it important that the Data Protection Act is amended to allow for comparable sanctions. Furthermore, it is clear that the current financial sanctions are not, on their own, a sufficient deterrent to those engaged in the trade in personal information.

4. Benefits

Option 1

Do nothing – there are no benefits to following this approach.

Option 2

There are two principal benefits to following this approach. Firstly, parity of approach. It is important that all offences of misusing personal data are punishable to the same high standards. This proposal will bring the Data Protection Act up to the same standard as the most recent legislation dealing with similar type offences. Secondly, deterrence. It is clear from the ICO's special report that the current financial penalties are not a sufficient deterrent. A custodial penalty will act as a stronger deterrence to individuals.

5. Costs

Option 1

There would be no costs associated with this option

Option 2

There would be a slight increase in costs with this option on two areas – the Criminal Legal Aid budget and expenditure on courts, prisons and offender management.

(a) Legal Aid costs

The possibility of a custodial sentence will increase the likelihood of a defendant receiving criminal legal aid. It is accepted that those cases serious enough to be prosecuted in the Crown Court will be eligible automatically for legal aid. However, there have only been four DPA cases in the Crown Court in the last four years.

In considering legal aid for cases in the Magistrates' courts, it is important to note that data protection offences are in many cases 'white collar' crimes. Defendants are therefore likely to be more affluent than the average magistrates' court defendant, and therefore more likely than average to fail the means test and therefore not be eligible for legal aid. On this basis, our main assumption is that

50% of those cases prosecuted in the magistrates' courts will qualify for legal aid if these proposed new sentencing powers are introduced. However, for modelling purposes we will also include 'worst case' costs in which all magistrates' courts cases qualify for legal aid. The potential number of DPA cases should have a minimal effect on legal aid costs in Scotland.

Based on the evidence from the ICO's report on prosecution numbers over the last 4 years, we can assume for costing purposes that there are an average of four magistrates' courts DPA cases per year and one Crown Court DPA case per year. Discussions with the Information Commissioner's Office have indicated that this is a fair assumption to make. The government does not consider that the creation of a new custodial sanction will increase the number of prosecutions brought forward by the prosecuting authorities, as it is only the range of available sanctions that will expand. The nature of the offences themselves will be unaffected.

If we take the 'best case' (in terms of impact on legal aid expenditure) to be that the numbers of cases remain at this level, and the 'worst case' to be that they increase by 100%, it is possible to project the extra burden on the Legal Aid budget.

The following table shows, for the scenarios outlined above:

(a) the cost that would have been incurred by the legal aid budget over the last four years had these proposals been in place, and projected costs for future years

		costs			
year	**Volume**	**100% receive legal aid**		**50% receive legal aid**	
		min (£)	**max (£)**	**Min (£)**	**max (£)**
2002	2 x magistrates' courts 1 x Crown Court	£2,800	£16,000	£2,600	£15,000
2003	7 x magistrates' courts 1 x Crown Court	£5,700	£18,000	£3,300	£16,000

be £8,500. If a single person were to receive a maximum sentence in a worst case scenario the aggregated total cost would be £67,800. The potential future cost therefore lies between £4,000 (Legal Aid expenditure only and no custodial sentence) and £67,800 (maximum Legal Aid and maximum prison expenditure).

6. Race Equality Impact Assessment

These proposals will not have any effect on race equality.

7. Judicial Impact Assessment

There will be minimal impact on the judiciary in the form of training and awareness for the new custodial sanctions. It is not anticipated that there will be any rise in the number of prosecutions and consequent extra demand on judicial resources.

8. Consultation with small business; the small firms impact test

The small business services have been consulted. There will be no additional impact on small firms. The proposals will not make any further demands on businesses than are currently imposed by the Data Protection Act 1998.

9. Competition Assessment

There will not be any greater impact on any particular business sector. The proposals will not make any further demands on businesses than are currently imposed by the Data Protection Act 1998.

10. Enforcement

The enforcement and sanctions are to be delivered and regulated by the Information Commissioner. There are no changes to the way it is enforced, as the amendment will not create any new offences.

11. Monitoring Review

We will keep the operation of the custodial sanctions under review, and monitor the efficacy of them acting as a deterrent effect.

Consultation

This RIA accompanies a full public consultation paper *'Increasing penalties for deliberate and wilful misuse of personal data.'*

Summary Recommendation

The Government is proposing to amend the DPA to include custodial sanctions for offences committed in relation to misuse of personal data. For the reasons set out above and in the consultation paper, the government believe that Option 2, to make changes to only the offences committed under section 55 of the DPA, represents a fair and balanced approach to these issues.

The Consultation Criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the time scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

These criteria must be reproduced within all consultation documents.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact the Department for Constitutional Affairs Consultation Co-ordinator, Laurence Fiddler, on 020 7210 2622, or email him at consultation@dca.gsi.gov.uk

Alternatively, you may wish to write to the address below:

Laurence Fiddler
Consultation Co-ordinator
Department for Constitutional Affairs
5th Floor Selborne House
54-60 Victoria Street
London
SW1E 6QW

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under **the How to respond** section of this paper at page 18.

Produced by DCA
July 2006
CP 9/06