

APPLICATION FORM FOR ACCREDITATION AS A DATA PROTECTION AUTHORITY

Application to the Credentials Committee for accreditation as a data protection authority pursuant to the resolution adopted at the 23rd International Conference of Data Protection and Privacy Commissioners at Paris on 25th September 2001.

Notes:

- (a) Please complete application in French or English.
- (b) Please keep answers brief and to the point.
- (c) Please ensure that all 31 questions are answered.
- (d) If you retype the form, please include the numbered questions with your answers.

Details of applicant

- 1. Name and postal address of authority

The Information Commissioner

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
United Kingdom

- 2. Contact person for this application:

- (a) Name

Jonathan Bamford

- (b) Email address

j.bamford@data-protection.co.uk

- (c) Direct telephone number

01625 57570

- (d) Fax contact

01625 57570

Type of application

3. The application is for accreditation as:
- | | |
|---|-----|
| (a) national Authority | YES |
| (b) sub-national Authority | NO |
| (c) Authority within an international or supranational body | NO |

Description of applicant

4. Description of Authority (e.g. commissioner, commission, board etc)
- A single Commissioner
5. Is the Authority a public body? YES
6. Geographical jurisdiction
- United Kingdom
7. Sectoral coverage (i.e. does the applicant's jurisdiction cover the entire public and private sectors? If only part of a sector or if there are significant activities not covered, please specify)
- Both public and private sectors
8. Is the role of the Authority mainly concerned with data protection and privacy?
YES

Legal basis

9. Title of law under which the Authority is constituted
- The Data Protection Act 1998 (section 6) & The Freedom of Information Act 2000 (section 18)
10. Is this principally a data protection law? No
11. Status of the law (e.g. statute, regulation, executive order)
Statute

12. Which body made the law?

United Kingdom Parliament

13. What body has the power to amend or revoke the law?

United Kingdom Parliament

Autonomy and independence

14. Who appoints members of the Authority? (Please explain if a different process applies to the presiding member from other Authority members in this question and in subsequent questions.)

Her Majesty The Queen by Letters Patent

15. What process is followed?

The appointment of the Information Commissioner is the subject of an open competition with candidates being assessed for suitability by the Lord Chancellors Department. This Department makes recommendations to the Prime Minister who in turn makes his recommendations to Her Majesty

16. For what term are appointments made?

Appointments are made for a term not exceeding five years. A person who ceases to be Commissioner on the expiry of their term of office shall be eligible for re-appointment. A person may not be re-appointed for a third or subsequent term as Commissioner unless, by reason of special circumstances, the re-appointment for such a term is desirable in the public interest

17. Who may remove members of the Authority before expiry of their term?

The Commissioner may be removed from office by Her Majesty at her own request, or in pursuance of an address from both Houses of Parliament

18. Are there limited reasons specified in the statute, or in another law, providing the permitted grounds for removal?

No – but the process for removing the Commissioner from office is such that it would only be used in the most exceptional circumstances e.g. corruption

19. What are the grounds for removal?

See question 18

20. Does the Authority possess the following powers (briefly describe and give statutory references)

(a) to initiate an investigation with seeking provision YES

The Commissioner has a power to carry out assessments in relation to the processing of personal data, the power to serve information notices and also to apply for and execute search warrants. These provisions are contained in Part V of the Data Protection Act 1998.

(b) to report to the head of State, head of Government or legislature YES

The Commissioner is required annually to lay before each House of Parliament a report on the exercise of her functions under the Act. She may also from time to time lay reports before both Houses of Parliament by virtue of section 52 of the Data Protection Act 1998

(c) make public statements YES

The Commissioner shall arrange for the dissemination in such forms and manner as she considers appropriate information as it may appear to her to be expedient to give to the public about the operation of the Act, about good practice, and about other matters within the scope of her functions under this Act, and may give advice to any person as to any of those matters (Section 51 of the Data Protection Act 1998). The Commissioner can, and does routinely, make public statements on all aspects of data protection and other related matters.

21. Does the Authority (and its staff) have immunity from legal suit for actions performed in the course of their duties?

NO

22. Applicants may list any other measures set out in the statute or in other laws which guarantee the Authority's independence (for example if the law provides specifically that the Authority is to act independently, that the Authority's finances are protected).

Consistency with international instruments

23. Does the law under which the Authority operates explicitly implement any international instrument? YES

If "yes", which of the following does the law principally implement?

- (a) OECD Guidelines (1980) YES
- (b) (i) Council of Europe Convention No 108 (1981) YES
(ii) Council of Europe Additional Protocol (8 November 2001) YES
- (c) UN Guidelines (1990) YES
- (d) EU Directive (1995) YES
24. Does the law instead, or additionally, implement any general or specific international instrument? (If so, list the international body and the instrument)
NO
25. Have significant questions been raised about the extent to which the law is consistent with the international instruments which are claimed to be implement in answer to questions 21 and 22? (Applicants should supply further information to assist the Committee including a description of any measures under way to address these inconsistencies.)
Yes (apart from some matters of details where the Commissioners office questions whether United Kingdom law properly implements Directive 95/46/EC)

Appropriate functions

26. Does the Authority possess functions in any of the following areas (briefly describe and give statutory references):

- (a) compliance (e.g. audit, inspection) YES

Audits 51 (7) The Commissioner may, with the consent of the a data controller assess any processing of personal data and then inform the data controller of the results of the assessment

Inspection (s50) The provisions of schedule 9 of the Act allow for the Commissioner to apply for warrants to enter premises and search, to inspect, examine operate or test equipment which is used or intended to be used for the processing of personal data. Prosecution (s60) No proceedings for an offence under the Act can be brought except by the Commissioner or by or with the consent of the Director of Public Prosecutions

(does not apply to Scotland and the for Northern Ireland must be the DPP for Northern Ireland)

(b) approvals (e.g. prior-checking, notification) YES

Part III of the Act contains provisions for notification

(c) redress for individuals (e.g. complaints, conciliation enforcement) YES

Part V of the Act contains provision whereby individuals can ask the Information Commissioner to assess processing to see if it is in compliance with the Act (section 42),

An individual who suffers damage by reason of any contravention by a data controller of any requirement of the Act is entitled to compensation from the data controller for that damage. Further an individual who suffers distress by reason of any contravention by a data controller of any requirement of the Act is entitled to compensation from the data controller for that damage if, the individual also suffers damage by reason of the contravention.

(d) sanctions available to Authority (for example, prosecution and enforcement) YES

The provisions of Part 5 of the Act provide for the prosecution of breaches of notices under the Act. There are also offences in relation to non notification and unauthorised disclosures

(e) guidance (e.g. compliance advice) YES

The Commissioner shall arrange for the dissemination in such forms and manner as she considers appropriate information as it may appear to her to be expedient to give to the public about the operation of the Act, about good practice, and about other matters within the scope of her functions under this Act, and may give advice to any person as to any of those matters (Section 51 of the Data Protection Act 1998).

(f) public education YES

Section 51 as above

(g) policy advice for government YES

Section 51 as above

(h) research or studies (e.g. into developing technologies, privacy issues) YES

Research (s51) It shall be the duty of the Commissioner to promote the

following of good practice by data controllers and, in particular, so to perform her functions under the Act as to promote the observance on the requirements of this Act by data controllers

Additional comments

27. Applicants are invited to offer any further comments that they wish.

Other materials

28. List any attachments which will accompany the application as an electronic attachment or to follow by post.

N/A

29. If law under which the Authority operates is accessible on the Internet, please give the reference

URL: www.legislation.hmsso.gov.uk/acts/acts1998/19980029.htm

30. If a recent annual report of the Authority (or a similar recent publication outlining typical activities) is available on the Internet, please give the reference

URL: www.informationcommissioner.gov.uk/ar2001/index.html

Research use

31. With the consent of applicants, the Committee proposes to make copies of the applications available to appropriate researchers approved by the Committee to facilitate a study on data protection. Please indicate whether you agree to this use:

- I agree to this application being released to a researcher YES

Making the application

The application should be emailed to the credentials committee at credentials@privacy.org.nz

If sent as an email attachment it should be in M/S Word.

If unable to email the application, it should be posted to:

Credentials Committee
C/- Privacy Commissioner
P O Box 466
Auckland
New Zealand

The Committee needs access to a copy of the law under which the Authority is constituted. This need not be supplied in hard copy if it is available on the Internet and listed at question 29. If the law itself is not in English or French, it will be useful to supply an English or French summary or translation if one exists.

Use of information

The information in this form will be used for processing the application and will be disclosed to members of the committee and their staff (being the commissioners from New Zealand, France and the UK) and future committees, and may be disclosed at the international conference and approved researchers. Any personal data contained in the form is available for access and correction in accordance with the applicable data protection laws of current and future committees. In the first instance it is subject to the New Zealand Privacy Act 1993 and will be shared with the national authorities of France and the UK.

**ACCREDITATION OF DATA PROTECTION AUTHORITY
CHECKLIST FOR THE CREDENTIALS SUB-GROUP**

1 Name of Authority

Information Commissioner, United Kingdom

2 Does the authority have clear and wide ranging data protection functions covering a broad area of economic activity (eg not just an advising body or a body operating in a narrow field such as medical privacy)?

Yes

Notes

3 Legal Basis.

Is the authority a public body established on an appropriate legal basis (eg by statute or regulation)?

Yes

Notes

4 Autonomy and Independence?

Is the authority guaranteed an appropriate degree of autonomy and independence to perform its functions (eg the power to make public statements and protection from removal from office)?

Yes

Notes

5 Consistency with International Instruments.

Is the law under which the authority operates compatible with at least one of the international instruments dealing with data protection and privacy (eg EU Directive, OECD Guidelines, Council of Europe Convention)?

Yes

Notes

All principal instruments said to be implemented:

- **OECD**
- **CoE (Convention and Protocol)**
- **UN**
- **EU**

6 **Appropriate Functions.**
Does the authority have an appropriate range of functions with the legal powers necessary to perform those functions (eg the power to receive and investigate complaints from individuals without seeking permission)?

Yes

Notes

7 Does the Sub-group recommend accreditation?

Yes

Notes

8 If accreditation is recommended what is the accreditation as?

National authority

Notes

9 If accreditation is as an authority within an international/supranational body does the recommendation include voting rights?

Not applicable

Notes

10 If accreditation is not recommended does the Sub Group recommend that accreditation is refused or is more information needed before a decision can be made?

Not applicable

Notes

11 If accreditation is not recommended and the application is from an authority with narrow functions does the Sub Group recommend that, at the discretion of the conference host, observer status is granted?

Not applicable

Notes

If more information is required what is this:

Signed on behalf of the Sub-
group:

Blair Stewart

Date: **22 May 2002**

Marie Georges

Date: 9 juillet 2002

Date:

Note: 2 signatures required for recommendations for accreditation.
3 signatures required for recommendations for refusal