

**ACT NO. 48 OF 9 JUNE 1978  
RELATING TO PERSONAL DATA FILING SYSTEMS, ETC.**

**Chapter 1**

**Scope of the Act**

**§ 1**

The Act is applicable to personal data filing systems and to other uses of personal data in certain types of activities.

The term "personal data" shall mean information and assessments which are, directly or indirectly, traceable to identifiable individuals, associations or foundations. The term "personal data filing system" shall mean filing systems, records, etc. where personal data is systematically stored so that information concerning an individual person may be retrieved.

The Act is applicable to personal data filing systems and the use of personal data in central or local government institutions as well as in private enterprise, societies or foundations.

The King may determine that the Act shall not apply to certain types of personal data filing systems.

**Chapter 2**

**Data Inspectorate**

**§ 2**

A data inspectorate shall be established. The Data Inspectorate shall be a separate institution subordinate to the King and the Ministry designated by the King.

The Data Inspectorate shall be under the direction of a board, which shall consist of seven members. The members shall be appointed by the King, who shall also nominate the chairman and vice-chairman of the board.

### § 3

The comments of the Data Inspectorate shall be obtained before decisions are adopted which, under the terms of this Act, are to be made by the King. The foregoing shall not, however, apply to decisions pursuant to section 2.

Otherwise, the Data Inspectorate shall:

- 1) keep itself informed of general developments with regard to the utilization of personal data filing systems and to the problems connected with such filing systems, and provide information in this respect.
- 2) provide advice and guidance on questions concerning the protection of privacy of individuals and data safeguards to those who are planning to establish personal data filing systems.
- 3) ensure that the statutes, rules and regulations applicable to personal data filing systems are observed, and that errors or deficiencies are rectified.
- 4) upon request or on its own initiative, give its opinion on questions concerning the use of personal data filing systems or on questions of a general nature concerning the utilization of personal data.

The King may assign additional duties to the Data Inspectorate concerning the use etc of personal data filing systems or the utilization of personal data otherwise.

### § 4

The Data Inspectorate shall keep a systematic record of personal data filing systems which have been granted a licence pursuant to section 9. The record shall refer to the rules which are laid down pursuant to section 11. A copy of the rules shall be deposited with the Data Inspectorate.

The record and the rules shall be available to the general public.

The King may issue specific rules concerning the record and may make such exceptions to the provisions of the first paragraph as are necessary in the interests of emergency preparedness or the security of the realm.

### § 5

The Data Inspectorate may demand such information as is needed to enable it to carry out its duties. The Inspectorate may demand admittance to places where personal data filing systems, film recordings as referred to in chapter 9a and technical aids are located, as well as undertake such tests or inspections as it deems necessary. The Inspectorate may demand such assistance

from the personnel in such places as is necessary to carry out the tests or inspections.

The Data Inspectorate's right to demand information shall not be limited by any statutory provisions concerning confidentiality.

The King may make such exceptions to the provisions of the first and second paragraphs as are necessary for the security of the realm. The King may also issue regulations concerning the reimbursement of expenses incurred in connection with inspections. Recovery of any amount outstanding in the reimbursement of such expenses may be enforced by execution.

### Chapter 3

#### General provisions

##### § 6

The registration of personal data must be objectively justified in the light of the administrative and other activities of the institution or enterprise undertaking such registration.

Unless necessary, registration must not be undertaken in respect of

- 1) data relating to racial origin, political opinions or religious beliefs,
- 2) data on whether a person has been suspected of, indicted for or convicted of an offence,
- 3) data concerning health or abuse of intoxicants,
- 4) data concerning sexual life.
- 5) data concerning family affairs other than those referring to family relationships or family status, property arrangements between spouses and family support obligations.

##### § 7

Everyone is entitled to be informed of the data concerning himself which is stored or processed by means of electronic aids. This right of subject access to information shall not however apply to filing systems which are only used for statistical, research or general planning purposes. Nor does the right of subject access to information apply to data which it is considered inadvisable to bring to the knowledge of the data subject out of regard for his health or his relationship with persons close to him.

As regards personal data filing systems in central or local government institutions, the right of subject access as defined in the first paragraph shall also apply to data which are not stored or processed by means of electronic aids. The data subject may not, however, demand access to documents which are deemed to be internal documents pursuant to section 18 of the Public Administration Act.

Furthermore, as regards personal data filing systems in central or local government institutions, everyone is entitled to be informed of the types of data which are included in the filing system.

The King may by regulations decide that the provisions laid down in the second and third paragraphs shall also apply to personal data filing systems in private enterprise, associations or foundations, or for certain such filing systems.

The King may, by regulations or in respect of an individual filing system, make additional exceptions from the right of subject access and lay down specific rules or set conditions for the use of such a right.

## § 8

If a personal data filing system contains erroneous or incomplete data, data which it is not permitted to enter in the filing system, or data which is no longer relevant, such data shall be rectified, erased or supplemented if the defect may be of significance for the data subject. If erroneous or incomplete data have been provided or used as a result of the defect, all possible steps shall be taken to ensure that the defect does not affect the data subject.

When there are errors as mentioned in the first paragraph, the Data Inspectorate may order rectifications, erasures and supplements to be made to the filing system as well as order such steps as are mentioned in the second sentence of the first paragraph.

### § 8 a

A person may demand that his name be blocked in a personal data filing system so as to prevent its use in respect of the distribution of advertising material or similar publications.

### § 8 b

The King may by regulations or by individual decision issue provisions for the protection of personal data.

## Chapter 4

### Duty to obtain consent to the establishment of personal data filing systems

#### § 9

The consent of the King (licence) is required to establish personal data filing systems which are to utilize electronic aids. Such consent is also required to establish other personal data filing systems if they are to include

- 1) data relating to racial origin, political opinions or religious beliefs,
- 2) data on whether a person has been suspected of, indicted for or convicted of an offence,
- 3) data concerning health or abuse of intoxicants,
- 4) data concerning sexual life, or
- 5) data concerning family affairs other than those referring to family relationships or family status, property arrangements between spouses and family support obligations.

The King may decide that certain types of personal data filing systems shall be exempted from the licence requirement pursuant to the first paragraph. In respect of such filing systems, regulations may be laid down concerning such circumstances as are mentioned in section 11. Other regulations may also be laid down to minimize the problems in which the filing system might otherwise involve an individual data subject, including rules prescribing that the filing system shall be subject to inspection by the Data Inspectorate and be included in the record kept pursuant to section 4.

The King's powers pursuant to the first and second paragraphs may only be delegated to the Ministry or to the Data Inspectorate.

The first paragraph does not apply to personal data filing systems which are established by the Office of the Auditor General in connection with its control activities. Such personal data filing systems shall be erased as soon as the control has been effected.

#### § 10

When deciding whether consent shall be granted, an assessment shall be made - within the framework laid down in section 6 - as to whether the establishment and utilization of a personal data filing system may cause problems for the individual data subject which cannot be solved satisfactorily by rules laid down pursuant to section 11. If there is a possibility that such problems will arise, due consideration must be given to whether these problems are outweighed by considerations that favour the establishment of the register.

## § 11

When consent is granted pursuant to section 9, rules shall be laid down for the personal data filing system indicating the types of data the filing system may contain and the purposes for which the filing system may be used.

In addition, the rules shall prescribe such conditions as are relevant for the utilization of the filing system or which can minimize the disadvantages that might otherwise be entailed by the establishment and utilization of the filing system. In particular consideration should be given to laying down rules on

- 1) the collection and control of such data as the filing system may contain,
- 2) the handling and storage of such data,
- 3) the right to coordinate data with other personal data filing systems, etc.,
- 4) the use of personal identity numbers,
- 5) the disclosure of data, including the question of whether data may be transferred to other filing systems,
- 6) the scope and substance of the data to be provided by notification or other forms of communication to the data subject,
- 7) the right of data subjects to demand information pursuant to section 7,
- 8) the rectification of data or routines in the filing system,
- 9) updating the filing system,
- 10) the erasure or blocking of data after a certain period of time, and whether the filing system should be transferred to the general archive system/national archives,\*

In addition the rules shall designate the institution or enterprise or the person responsible for ensuring the proper implementation of the rules.

## § 12

Rules laid down pursuant to section 11 may not be departed from except by consent of the institution that has laid down the rules, or - if the rules so prescribe - of the Ministry or the Data Inspectorate.

## Chapter 5

### Credit information and personal data services

#### § 13

The term "credit information services" shall, for the purposes of this chapter, mean activities which consist in providing data which throws light on creditworthiness or financial reliability (credit information). This chapter does not apply to the utilization of data within an enterprise, or in relation to enterprises within the same corporate group unless the data is provided by an enterprise operating a credit information service. Nor does it apply to the provision of data to another credit information enterprise to which this Act applies, provided that the data is to be utilized in connection with this enterprise's own credit information service.

The King may issue supplementary regulations concerning what is to be understood by the term "credit information service". For certain types of enterprises the King may, by regulations or by individual decision, make exceptions to the individual provisions of this Chapter.

Enterprises operating credit information services may not operate other personal data services without the consent of the King.

#### § 14

An enterprise may not start a credit information service before the King has given his consent thereto.

When deciding whether consent shall be given, due regard shall be paid to whether the service concerned may be expected to be operated in an honest and sound manner. Within the framework of the provisions of this Act, such conditions may be imposed in respect of the licence as are appropriate to promote these aims, including the provision of security in respect of liability. As regards enterprises under the control of foreign interests, conditions may be prescribed concerning the form of establishment and the composition of the company's management.

#### § 15

The credit information enterprise shall ensure that the data utilized for credit information purposes shall, as far as possible, be complete and that data shall not be used which may give grounds for an unjustifiably or unreasonably negative attitude in respect of the data subject.

Data which at the end of a calendar year will be three years old or more may only be utilized if it is evident that such data are still highly relevant to the proper assessment of the data subject.

#### § 16

- The enterprise may not as part of its credit information service utilize
- 1) data relating to racial origin, political opinions or religious beliefs,
  - 2) data on whether a person has been suspected of, indicted for or convicted of an offence,
  - 3) data concerning health or abuse of intoxicants,
  - 4) data concerning sexual life, or
  - 5) data concerning family affairs other than those referring to family relationships or family status, property arrangements between spouses and family support obligations.

However, the King may consent to data as mentioned in items 2 and 3 of the first paragraph being collected and communicated in certain cases.

#### § 17

No credit information may be provided when it is evident from the facts of the case that the applicant has no objective need for such information.

#### § 18

Credit information shall ordinarily be communicated in writing. It may be given orally, provided it does not contain any data which can be cited against the data subject, or if the credit information for practical reasons must be provided without delay. If credit information is given orally, the substance of the data together with the applicant's name and address shall be recorded and kept on file for at least six months. If it contains anything which can be cited against the data subject, such information shall be confirmed in writing.

Credit information may be supplied by distribution of publications or lists, provided that the publication or list only contains data concerning business enterprises, and that the data is given in summary form. Such publications may only be sent to members and subscribers.

Applications for credit information indicating that the applicant shall be kept informed of any data which comes to the knowledge of the credit information enterprise in the future or during a certain period of time may only be made in respect of data relating to business enterprises.

### § 19

When credit information concerning someone who is not in business is provided or confirmed in writing, the credit information enterprise shall at the same time send a copy or other notification concerning the contents free of charge to the person about whom data has been requested.

### § 20

Everyone has a right to be informed of what data the enterprise has stored relating to himself for use for credit information purposes, and to be informed of what credit information has been provided about him during the last six months. The enterprise is also under an obligation to state who requested the information, and from whom it received the information. Replies shall be given in writing unless the data subject has consented to its being given in another manner. If the information on the contents of the filing system is given in summary form, or if the enterprise has stored data which is not repeated in full, this shall be stated in the reply. The data subject may demand to examine all the documents etc. upon application to the enterprise.

The enterprise may charge a reasonable fee in cases where data pursuant to the first sentence of the first paragraph are provided in writing. The King may by regulations or by individual decision lay down specific rules regarding the computation of such a fee.

### § 21

The King may by regulations prescribe that section 14 relating to the licence requirement shall also apply to other enterprises operating personal data services. In the licence, conditions may be imposed for the collection, storage

and use of data, as well as for exercising control, the right of the data subject to have access to the data and the right to demand that his name be erased from the filing system.

## Chapter 6

### Data processing enterprises

#### § 22

Activities which consist in processing personal data for third parties by means of electronic aids may not be initiated before the King has given his consent thereto. The second paragraph of section 14 applies correspondingly.

The provisions of the first paragraph do not apply if such processing takes place exclusively for other enterprises within the same corporate group.

The King may issue supplementary regulations concerning what is to be regarded as a data processing enterprise for the purpose of applying the provisions of the first paragraph, and may by regulations or by individual decision make exceptions to the individual provisions of this Chapter.

#### §23

Enterprises which are required to obtain a licence pursuant to section 22, first paragraph, may not, save by agreement with the client, utilize the data for purposes other than those covered by the assignment. Nor may the data, save through such an agreement, be entrusted to anyone else for storage or processing purposes.

#### § 24

The enterprise shall adopt such security measures as are necessary.

The King may by regulations or in respect of the individual enterprise lay down provisions concerning the security measures which shall be implemented.

## Chapter 7

## Address and distribution services

### § 25

Activities which consist in selling or in other ways offering addresses of groups of people, or in carrying out assignments involving the distribution of advertising and other communications to such groups, may not be commenced before the King has given his consent thereto. The second paragraph of section 14 applies correspondingly.

The King may issue supplementary regulations concerning which enterprises shall be subject to licensing pursuant to the first paragraph, and may by regulations or by individual decision make exceptions to the provisions of this Chapter.

### § 26

A filing system utilized for such activities as mentioned in section 25, first paragraph, may not contain

- 1) data relating to racial origin, political opinions or religious beliefs,
- 2) data on whether a person has been suspected of, indicted for or convicted of an offence,
- 3) data concerning health or abuse of intoxicants,
- 4) data concerning sexual life, or
- 5) data concerning family affairs other than those referring to family relationships or family status, property arrangements between spouses and family support obligations.

The King may by regulations or by individual decision further restrict the right of the enterprise to register personal data, and regulate the use of registered data.

### § 27

Notwithstanding the provisions of section 26, the enterprise may dispatch notifications based on customer and membership filing systems which are placed at its disposal by the client. Such filing systems may only be used for the dispatch of notifications concerning the client's goods and services, etc. and they may not be entrusted to others.

### § 28

The enterprise shall in its filing systems erase the name of anyone who so requests. A data subject may demand to be informed of the source of the enterprise's registered data.

If the demand for erasure applies to such filing systems as are mentioned in section 27, such a demand shall be forwarded to the client, who is under an obligation to ensure that the person concerned is deleted as addressee under any subsequent use of the register. The person who has made such a demand shall be informed of the forwarding of the demand and the name of the client.

### § 29

The King may by regulations or in respect of the individual enterprise lay down provisions with a view to preventing the use of personal data in violation of sections 26 and 27 and to ensure the implementation of the provisions of section 28.

### § 30

- The King may by regulations prescribe
- 1) that section 26, section 27 and section 28 shall apply correspondingly to enterprises which in individual cases undertake such assignments as are mentioned in section 25, first paragraph,
  - 2) that certain types of data may not be utilized for the selection of addressees for the dispatch of notifications in respect of the enterprise's own goods and services, etc., and that section 28 shall apply correspondingly to such address lists.

## Chapter 8

### Opinion polls and market surveys

### § 31

Activities which consist in conducting opinion polls or market surveys for third parties may not be commenced before the King has given his consent thereto. The second paragraph of section 14 applies correspondingly.

The King may issue supplementary regulations concerning which enterprises shall be subject to licensing pursuant to the first paragraph, and may by regulations or by individual decision make exceptions to the provisions of this Chapter.

### § 32

Personal data provided by a party in the course of opinion polls or market surveys may not be disseminated further in such a way that the data subject is identifiable.

Data received for the purpose of opinion polls and market surveys may not be utilized for other purposes.

### § 33

Data concerning name, date of birth, personal identity number or the like may not be entered into a filing system which is processed by means of electronic aids without the consent of the data subject. Nor shall such data be entered into any other filing system which is specially designed to make the data easily accessible and easy to use.

The data collected shall not be stored for more than six months in a form that may lead to the identification of the data subject without the consent of the said subject.

### § 34

The King may issue further regulations concerning such activities as are mentioned in section 31. The regulations may include provisions relating to the collection of data, the storage of the data collected, and other provisions to ensure that personal data so collected are not utilized wrongfully or fall into the wrong hands.

### § 35

The King may by regulations prescribe that section 32, section 33 and section 34 shall also apply to enterprises which in individual cases undertake such assignments as are mentioned in section 31, first paragraph, and to enterprises which initiate such surveys for the benefit of their own administration and activities.

## Chapter 9

### Transfer to another country, etc.

### § 36

Filing systems governed by section 9, first paragraph, must not be transferred to another country without the consent of the King.

Personal data collected in the realm may not be transferred to another country without the consent of the King if the purpose is to enter the data into a filing system as mentioned in section 9, first paragraph.

The King may by regulations make exceptions to the first and second paragraphs. It may be prescribed that these provisions shall not apply in relation to certain other countries.

### § 37

The King may issue regulations concerning cooperation between the Data Inspectorate and supervisory authorities in other countries. In such regulations special rules may be laid down concerning notification requirements in respect of filing systems and concerning supervision or destruction of filing systems.

## Chapter 9a

### Video surveillance

1) Added by Act No. 78 of 11 June 1993 (entry into force as of 1 January 1994 pursuant to Royal Decree No. 1066 of 26 November 1993).

**§ 37a**

Video surveillance and image recordings in connection with such surveillance are only permitted if they are objectively justified in the light of the activities of the institution or enterprise that is carrying out the surveillance. In the case of surveillance of a place which is regularly frequented by a limited group of people, however, surveillance is only permitted if there is a special need for such surveillance in the interests of the said activities.

The image recordings shall be erased when there are no longer objective grounds for storing them.

The term "video surveillance" means the continuous or regularly repeated surveillance of persons by means of a remote-controlled or automatically operated video camera, camera or similar device.

This chapter shall not apply to image recordings which are to be regarded as personal data filing systems. In case of doubt the King may decide when a image recording that has been made by means of video surveillance shall be regarded as a personal data filing system pursuant to section 1, second paragraph.

**§ 37b**

Image recordings made in connection with video surveillance may only be delivered to a person outside of the enterprise or institution that has carried out the recording if the subject of the recording consents thereto or if there is statutory provision for such delivery. Unless the statutory duty of secrecy prevents delivery, the image recording may however be delivered to the police in connection with the investigation of criminal acts or accidents. The King may by regulations or in respect of the individual case prescribe that image recordings may be delivered in cases other than those provided in the first and second sentences.

The King may by regulations lay down further rules relating to the protection, use, delivery and erasure of image recordings carried out during video surveillance. The King may also lay down regulations relating to the right of the surveillance subject to have access to the portions of the image recordings in which he or she appears.

If image recordings are not erased in accordance with section 37a, second paragraph, or with regulations laid down pursuant to the second paragraph of this section, the Data Inspectorate may issue orders concerning erasure.

## Chapter 10

### Penalties and compensation

#### § 38

Anyone who wilfully or negligently

- 1) omits to obtain consent pursuant to section 9, section 13, third paragraph, section 14, section 22, section 25, section 31 or section 36,
  - 2) violates the rules or conditions laid down pursuant to section 11, section 14, section 22, section 25, section 31, section 36 or section 37b,
  - 3) utilizes data in violation of the provisions of section 16, section 18, section 23, section 26, section 27, section 32, section 33 or section 37b,
  - 4) omits to comply with the requirements of the Data Inspectorate pursuant to section 5, section 8 or section 37b,
  - 5) omits to comply with demands for information pursuant to section 7, section 20 or section 37b or demands for erasure pursuant to section 28 or section 37b.
  - 6) omits to notify the data subject pursuant to section 19,
- shall be liable to fines or imprisonment for a term not exceeding one year or both.

An accomplice shall be liable to similar penalties.

In regulations issued pursuant to this Act, it may be prescribed that violations of such regulations shall be punishable by fines or by imprisonment for a term not exceeding one year or both.

#### § 39

(Repealed by Act No. 66 of 20 July 1991 (entry into force on 15 October 1991 pursuant to Royal Decree No. 571 of 6 September 1991).)

#### § 40

If an enterprise operating a service as mentioned in section 13 has communicated data contrary to the provisions laid down in or pursuant to this Act, or has communicated data which proves to be inaccurate or obviously misleading, the said enterprise shall compensate any losses incurred by the data subject. This applies irrespective of whether anyone, acting on behalf of or in the service of the enterprise, has been guilty of negligence.

## Chapter 11

Relationship to other statutes.

Entry into force.

Transitional provisions

The licensing requirement pursuant to section 9, cf. section 10, does not apply to personal data filing systems in central or local government institutions which have been established by a separate Act. Nevertheless, such rules as are referred to in section 11 shall be laid down concerning such filing systems insofar as no other rules have been laid down in or pursuant to the enabling Act. The other provisions in this Act shall also apply to such filing systems, insofar as no other rules have been laid down in, or pursuant to the enabling Act.

### § 42

This Act shall enter into force on the date decided by the King.

As regards personal data filing systems which were established prior to the entry into force of the Act and which fall within the scope of section 9, application for consent shall be submitted within a time limit prescribed by the King. Provided that such applications have arrived within the time limit, personal data filing systems may be utilized unaltered until rules have been laid down pursuant to section 11.

The provisions of the second paragraph shall apply correspondingly to cases where consent is required pursuant to Chapters 5 to 9.

### § 43

As from the date of entry into force of this Act the following amendments shall be made to other Acts.