

Transposition into UK law of EC Directives

Lord Justice Schiemann

I

The UK Background

A few preliminary points. Perhaps all of those attending this conference know all of them. If so I hope I will be forgiven.

1. Unlike, I think, any of the other countries of the Union, we have two very different legal systems in place in the United Kingdom. The Scots have a system of law which has its origins outside the Common Law of England and Wales and is very different from it. The Northern Irish have a system of Common Law not very distinct from that known in England and Wales. In time past, when very little law of relevance to daily life was affected by legislation, these differences were of greater importance than at present. During the course of the last 150 years, however, Parliament has sought to regulate more and more and legislation keeps on displacing or modifying what used to be the law. Now, particularly in matters concerning the activities of the European Union, there is often no difference between our countries. In the context of the present report there are I believe no significant differences between the Scottish and English positions. It is worth noting, however, that United Kingdom legislators regularly face the task of transposing a legislative desire into the language of two different legal systems - the English and the Scottish. In the context of Directives this can lead to different legislative wording north and south of the border designed nevertheless to achieve the same end.

2. The United Kingdom has no written constitution of the sort which exists in most if not all countries on the continent of Europe. There is no significant room for legal dispute as to the present allocation of power between the English, the Scots, the Northern Irish and the Welsh. [The Welsh, in the legal context have rather been absorbed by the English and for present purposes can be equated with them. So I'm afraid I shall in this report no longer refer to that delightful country.] There is only one supreme legislative authority - the United Kingdom Parliament which sits in London - for the whole of the United Kingdom. There is currently no significant legislative authority in either Scotland or Northern Ireland. Very many of the legislative provisions made by the UK Parliament only apply to part of the Kingdom. However many also apply to the whole of the UK. One result of this is that many of the problems in relation to the transposition of Directives into national law which face our partners in the Union - for instance, in Germany : is this a matter reserved in the constitution for the Land authorities as opposed to the Federal Authorities? - are not legal problems for us. There are politicians in the UK who advocate the setting up of Scottish and other assemblies. If and when this happens no doubt the situation will change.

3. We have no constitution which specifies a list of entrenched constitutional or human rights. The European Convention on Human Rights is not as such part of our domestic law. In consequence there are no constitutional problems arising from the interference by Directives with human rights.

4. The UK has no constitutional court as such for cases of constitutional importance. Nor does any of its constituent parts. Nor indeed is there any supreme administrative authority such as a conseil d'etat. Parliament is the ultimate legislative authority on all matters. The general courts are the ultimate authority on all legal disputes - which in English terminology includes disputes as to the legality of administrative actions as well as civil and criminal disputes. In practice most legal questions relating to the alleged imperfect implementation of Directives will at some stage of the litigation process be heard by at least one judge who has expertise in this field. The court of ultimate resort is, in general, the House of Lords. However, no case is heard there save by permission of the House or of the court whose decision it is sought to challenge. In most cases the permission of the House needs to be sought. While any peer can take part in the legislative process, only specifically nominated peers of the highest legal standing take part in the judicial process - some dozen or so. They are the ultimate court for each part of the United Kingdom on every legal question that can arise. In the context of Community law they will, of course, often be under an obligation to refer a question to the European Court of Justice.

5. Under English domestic law, treaties confer no rights on individuals merely because the treaties have been ratified by the UK. An Act of Parliament is not necessary for ratification but is necessary before individuals acquire rights under any treaty. So the English juridical route to giving effect to Directives starts with The European Communities Act 1972 which provides in Section 2 that

- "(1) Allrights etc from time to time created or arising by or under the Treaties as in accordance with the Treaties are without further enactment to be given legal effect in the UK shall be recognised and available in Law
- (2) [contains a fairly wide general authority for ministers to make regulations for the purpose of implementing any Community obligation of the United Kingdom]
- (4) any enactment passed or to be passed shall be construed and have effect subject to the foregoing provisions of this Section"

In R v Secretary of State for Employment ex parte Equal Opportunities Commission (1995) 1 AC 1 at page 27 Lord Keith of Kinkel stated in the House of Lords

"A declaration that the threshold provisions of the Act of

1978 are incompatible with Community Law would suffice for the purposes sought to be achieved by the EOC This does not involve, as contended for the Secretary of State, any attempt by the EOC to enforce the International Treaty obligations of the United Kingdom. The EOC is concerned simply to obtain a ruling which reflects the primacy of European Community Law enshrined in Section 2 of the Act of 1972 and determines whether the relevant United Kingdom law is compatible with the Equal Pay Directive and the Equal Treatment Directive"

In R v Secretary of State for Employment ex parte Seymour-Smith and Perez (1995) ICR 889 the Court of Appeal was considering a situation where an employee sought to complain of unfair dismissal and to claim various statutory rights. Those statutory rights were only available to employees who had been continuously employed for 2 years. The Court held that the effect of the 2 year qualification period was incompatible with the principle of equal treatment enshrined in the Equal Treatment Directive because women in general changed jobs more frequently than men - because of breaks for childbearing etc - and therefore a smaller proportion of the female workforce had been in the same job for two years than was true in the case of the male workforce. The court further held that the Secretary of State on the evidence had not established objective justification for the discriminatory impact of the 2 year qualifying period. The Court made the following declaration :

The provisions of the Employment Protection (Consolidation) Act 1978 whereby the right not to be unfairly dismissed do not apply to employees who have not been continuously employed for a minimum period of two years at the date of their dismissal were incompatible with Council Directive 76/207/EEC as at the dates of the applicants' dismissal from employment on 1 May 1991 and 15 May 1991 respectively".

It is to be noticed that the national legislation remains intact although disapplied in a particular case. The court envisaged that a time might come when there was no longer any discriminatory impact of the legislation upon the sexes. Similarly, had a national law not coming from one of the Member States been dismissed, the Directive would have been irrelevant and the 2 year qualification period would have applied to her.

The foregoing has been established by the case law. What would happen if Parliament deliberately defied a Directive is fortunately untested. The traditional view is that if a UK Act of Parliament made clear, for example by express words to that effect, an intention by Parliament expressly to override the relevant Community Law, a United Kingdom court would be bound to give effect to this. The later Act would operate to that extent, as an amendment to The European Communities Act 1972, Section 2.

In practice it is unlikely that such an enactment would be passed

by Parliament unless the British Government had first taken steps to withdraw the UK from the Community, since passing the enactment would be inconsistent with continued membership.

6. When it comes to implementing Directives, the main legislative techniques are primary legislation - acts of the UK Parliament - and secondary legislation - most significantly regulations made by a minister by virtue of authority given by an Act of Parliament. That Act might be the European Communities Act 1972 but will often be an Act which deals with the subject matter of the directive. Such regulations typically either need specifically to be approved by Parliament before they come into force or are subject to Parliamentary veto. In general Parliament does not debate them at all. The typical challenge to the legality of a regulation comes in the form of an assertion that the regulation in question does not come within the powers granted by the Act of Parliament under which the regulation purports to have been made. The correctness of that assertion is determined by the judges of the High Court with an ultimate appeal to the House of Lords. Thus we do not have any major problems arising from the allocation to different judicial/administrative tribunals of questions as to the validity of the legislation which seeks to transpose Directives into national law.

II

The process of Transposition

Transposition is routinely achieved by legislation, primary or secondary. Secondary legislation is preferred since it does not occupy parliamentary time and can in general be achieved with less fuss. As explained above, there are no problems in relation to conflicts of competence.

As explained above, we have no supreme administrative tribunal. The drafting of primary legislation is the responsibility of Parliamentary Counsel who are employed solely for this task. The drafting of secondary legislation is the responsibility of the Minister to whom the power of making regulation is allotted by the primary legislation. We have no body such as the French Conseil d'Etat formally charged with ensuring that any proposed law has been subjected to a toilette du texte and is compatible with the European Convention of Human Rights, the Constitution and all non-repealed existing law. Nonetheless, unless Homer is nodding, the interaction of the proposed law with existing law and international treaty obligations is born in mind.

In the drafting of Acts of Parliament and of Regulations one finds examples both of a fairly literal transposition of the totality of the words of the Directive in question and of adaptations of concepts in the Directive to the existing local legislative situation. There are those who consider, particularly in the light of the threat to national finances posed by Francovich v Italian Republic [1991] ECR I-5357, that a literal transposition is the safest course.

At times one finds that the executive attempts to transpose Directives into national law by administrative action. Thus the UK's obligations to designate special protection areas under the Wild Birds Directive are allegedly fulfilled by means of administrative designations.

III

The juridical effects of a Directive

Preliminary

In principle in English law a Directive can have the following juridical effects

1. To give rights against the state or an emanation of the state
2. To serve as an aid to construction of UK legislation whether or not that legislation was enacted in order to give effect to the Directive.
3. To serve as a policy guide for the courts in a case where the court is developing the Common Law. This last is a provisional personal view. I know of no case law on the point.

In accordance with the wishes of the rapporteur, I have divided the remainder of this section into the three parts he suggests. In the English context, however, most of the cases have tended to include the question whether or no there has been proper transposition as well as possible questions relating to the effect of inadequate transposition.

A. Prior to transposition but whilst the period for transposition has not yet expired.

Once more, I know of no English case law on the point. But in principle, and following the ECJ decision in Pubblico Ministero v Ratti [1979] ECR 1629,1645, it seems probable that before the expiration of the period for transposition the Directive should have no juridical effect. The reason for proceeding by way of Directive rather than Regulation is to enable the Member State to determine its own method of transposition. Before the lapse of the period provided in the Directive for doing this

1. An individual does not acquire any rights under it;
2. (a) by definition, there is no legislation which was enacted in order to give effect to the Directive
(b) the justification for construing earlier legislation in the light of the Directive - which seems to me to be that, by not enacting legislation to give effect to the Directive, the legislator must be assumed to have considered that the earlier legislation achieved, in a manner which the legislator regards as acceptable, what the Directive seeks to achieve - disappears, since it may be that the legislator wishes to achieve that aim by another method.
3. the justification for developing the Common Law in the light of the policy considerations underlying the Directive - in itself a novel proposition in our law - is at its weakest where the time for the legislator to act has not yet elapsed.

B After complete and correct transposition

1. The theoretical position of the effect of a Directive on the

interpretation of UK legislation is not in doubt. As Lord Keith of Kinkel stated in the House of Lords in Webb v EMO Air Cargo Ltd (1993) 1 WLR 49 at pages 59 & 60

"The directive does not have direct effect upon the relationship between a worker and an employer who is not the state or an emanation of the state, but nevertheless it is for a United Kingdom court to construe domestic legislation in any field covered by a Community Directive so as to accord with the interpretation of the Directive as laid down by the European Court of Justice, if that can be done without distorting the meaning of the domestic legislation: Duke v GEC Reliance [1980] 1 AC 618..... this is so whether the domestic legislation came after or, as in this case, preceded the Directive: Marleasing [1990] ECR 1-4135."

"As the European Court of Justice said, a national court must construe a domestic law to accord with the terms of a Directive in the same field only if it is possible to do so. That means that the domestic law must be open to an interpretation consistent with the Directive whether or not it is also open to an interpretation inconsistent with it".

For a traditional English lawyer the Marleasing doctrine - that one can construe earlier domestic legislation in the light of later Directives - is a strange one. The general English doctrine has been that a provision in a United Kingdom Act must be construed by seeking and applying the intention of the Legislature which enacted it. Now we find in relation to a later Community Law that it is the supervening intention of a wholly different body that, within limits, is to prevail in construing the earlier Act. I have suggested a possible way of reconciling the Marleasing doctrine with the general English doctrine in paragraph A 2(b) above.

2. In the case of an alleged conflict between a national action and a Directive, in circumstances where there is in force UK legislation which correctly and fully transposes the Directive, an English court would look first at the UK legislation. Indeed the lawyer mounting the case might well not refer to the Directive. This seems in line with Félicita Rickmers-Linie v Finanzamt [1982] ECR 2771. If either side thought it useful to refer to the Directive they would be permitted to do so. If the court found the references to the Directive of help in solving the dispute before it then the court would incorporate such references in its judgment.

3. Of course, where the issue between the parties is whether the UK legislation correctly and fully transposes the Directive, it will be essential to look at the Directive.

C. Where there has been no transposition or incomplete transposition.

1. The English law as to the effect of an unimplemented Directive is the law as laid down by the European Court of Justice. In short, where the Directive has direct effect an individual may rely on it against the State and emanations of the State, which latter phrase has been given a wide interpretation.

2. The effect on the interpretation of English legislation of Directives has already been touched on above where I considered the position where a Directive has been fully implemented by transposing national legislation. Whether or no there has been proper transposition, national legislation will be interpreted so far as possible so as to be consistent with the Directive.

3. English law as to who has locus standi to bring an action for a declaration that there has been no transposition or incomplete transposition and /or an action for an order quashing or requiring some administrative action on this ground is not conceptually clear. All that is required is that the would-be challenger must have a "sufficient interest". In practice the courts have been very generous and given standing not merely to individuals directly affected¹ but also bodies such as The Friends of the Earth². There is an argument to be made to the effect that, where a Directive has no direct effect on an individual although it does have a direct effect on a Member State, then any breach by a Member State should only be challenged by another Member State or an organ of the Union.

4. Whether or no non-transposition of a Directive can give rise to a right in an individual to damages is a matter which has not yet been conclusively tested in English law. I have little doubt that it soon will be. The background in England, before we joined the European Communities, was that damages have not traditionally been awarded for the failure by administrative authorities to act, as opposed to acting negligently or unlawfully. That traditional attitude has been much criticised.

It is clear from Francovich [1991] ECR 1-5357 that complete failure to implement can give rise to a liability in damages if the conditions there set out are satisfied. An issue outstanding before the ECJ at the time of the drafting of this report is the circumstances in which liability for damages will be imposed for

¹ see R v Secretary of State for Employment, ex part Seymour-Smith supra

² see R v Secretary of State for the Environment, ex p. Friends of the Earth [1994] 2 CMLR 760. There it was held by the High Court [upheld by the Court of Appeal but the report is not yet published] that the UK had been in breach of the Drinking Water Quality Directive 80/778/EEC since 1985 because it misconstrued its effect and that there was no possibility of rectifying this state of affairs for a number of years.

incomplete or erroneous transposition³

One can see that the cash consequences of imposing liability in such circumstance are indeed frightening. This applies to the cases indicating that English employment and pension practice has been sexually discriminatory and in the type of situation exemplified in the cases referred to in the preceding paragraphs. There is, however, every reason to suppose that the English courts will loyally echo whatever comes from the ECJ.

I am conscious that I have not cited any English case law in relation to the mutual recognition of diplomas. To the best of my knowledge, there is none which directly concerns the questions under discussion at this conference.

IV

The transposition into UK law of the Data Directive

Introduction

English Common Law does not know a general right of privacy and Parliament has been reluctant to enact one⁴. This is much criticised but, in the context of this conference, has the significance that the UK does not have the many constitutional problems which complicate legislative life for many of the other Member States.

Although we have no general rights of privacy, a number of Statutes been enacted in the relatively recent past in this field which deal with particular aspects of the problems caused by the widespread storing of data on computers and elsewhere. The most important in the present context is the Data Protection Act 1984 (hereinafter referred to as "the Act") which was enacted following the signing of the Council of Europe Convention for the Protection of Individuals with regard to Automatic processing of Personal Data 1981. The others are The Access to Personal Files Act 1987 and The Access to Health Records Act 1990 each of which, in certain prescribed situations, widens the right of access by the data subject to personal data held by others.

A The Data Protection Act 1984

³ See Opinions of A.G.Tesauro delivered 28.11.95 in Case C-392/93, R v HM Treasury, ex p. British Telecommunications, and joined cases C-46/93 (Brasserie du Pêcheur) and C-48/93 (Factortame III).

⁴ per Lord Hoffman in R v Brown [Unreported decision of the House of Lords on 8.2.1996] I am indebted in much of what follows to his summary of the provisions of the Act.

The machinery employed by the Act to control the use of computerised personal information is a register of data users maintained by the Data Protection Registrar. The Act uses the register as an instrument of control in two ways. The first is by the Registrar's power to refuse an application for registration or to remove a data user's entry from the Register. The second method of control is the direct application of the criminal law to certain acts of the registered data user.

The Registrar's powers

The Act provides in section 4(3) that :-

An entry in respect of a data user shall consist of the following particulars -

- (a) the name and address of the data user;
- (b) a description of the personal data to be held by him and of the purpose or purposes for which the data are to be held or used;
- (c) a description of the source or sources from which he intends or may wish to obtain the data or the information to be contained in the data;
- (d) a description of any person or persons to whom he intends or may wish to disclose the data;
- (e) the names or a description of any countries or territories outside the United Kingdom to which he intends or may wish directly or indirectly to transfer the data; and
- (f) one or more addresses for the receipt of requests from data subjects for access to the data.

In Schedule 1, the Act sets out eight "Data Protection Principles" in the light of which many of the decisions under the Act are to be made. They read as follows:-

1. The information to be contained in personal data shall be obtained, and personal data shall be processed, fairly and lawfully.
2. Personal data shall be held only for one or more specified and lawful purposes.
3. Personal data held for any purpose or purposes shall not be used or disclosed in any manner incompatible with that purpose or those purposes.
4. Personal data held for any purpose or purposes shall be adequate, relevant and not excessive in

relation to that purpose or those purposes.

5. Personal data shall be accurate and, where necessary, kept up to date.
6. Personal data held for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
7. An individual shall be entitled:-
 - (a) at reasonable intervals and without undue delay or expense -
 - (i) to be informed by any data user whether he holds personal data of which that individual is the subject; and
 - (ii) to access to any such data held by a data user, and
 - (b) where appropriate, to have such data corrected or erased.
8. Appropriate security measures shall be taken against unauthorised access to, or alteration, disclosure or destruction of, personal data and against accidental loss or destruction of personal data.

The Act provides some guidance as to the interpretation of these Principles. Thus we find-

- 1.(1) Subject to sub-paragraph (2) below, in determining whether information was obtained fairly regard shall be had to the method by which it was obtained, including in particular whether any person from whom it was obtained was deceived or misled as to the purpose or purposes for which it is to be held, used or disclosed.
- (2) Information shall in any event be treated as obtained fairly if it is obtained from a person who -
 - (a) is authorised by any enactment to supply it; or
 - (b) is required to supply it by or under any enactment or by any convention or other instrument imposing an international obligation on the United Kingdom;

and in determining whether information was obtained fairly there shall be disregarded any disclosure of the information which is authorised or required by or under any enactment or required by any such convention or other instrument as aforesaid.

The Registrar may refuse an application for registration if he

is satisfied that the applicant is likely to contravene a data protection principle and in certain cases may de-register an existing user as the ultimate sanction for failure to comply with the principles. Subject to a right of appeal to the Data Protection Tribunal and a further right of appeal on law to the court, these powers enable the Registrar to enforce compliance with the principles.

The Criminal sanction

The second method of control is the direct application of the criminal law to certain acts of the registered data user. Thus, for example, it is provided that the holder of personal data shall not hold any such data, or use any such data, for any purpose other than the purpose or purposes described in the entry on the register or disclose the data to anyone not described in the entry on the register.

B The Rapporteur's questions

From that general introduction I turn to the specific questions posed by the Rapporteur. I shall answer them briefly since this conference will not be interested in the detail of this particular directive but rather in the nature of the problems posed by transposition of directives. The answers are my own, without a deep knowledge of the subject and do not seek to represent anybody else's views - still less a governmental position.

As explained in the first part of this report, the transposition of the Directive into UK law does not pose constitutional or procedural problems for us. In large part, its provisions are to be found in the Act and the Regulations made thereunder. In so far as the Regulations require modification that is simply done once appropriate drafting has been achieved. Some of the provisions of the Directive will require amendments to the existing law which can in principle be made either by primary legislation or secondary legislation in the form of an Order under the European Communities Act 1972 or, in some cases, the 1984 Act. The Courts have no part to play in this legislative process and we have no conseil d'état.

So far as I know, no decision has yet been made as to the manner in which it is proposed to transpose the Directive into national law. From a judge's point of view, and I suspect that of a citizen, the best end result is achieved if all the relevant law is contained in one Act of Parliament. If that course attracts the Government then it will repeal the 1984 Act and replace it with a new one. From any government's point of view that course of action has the disadvantage of potentially occupying a considerable amount of Parliamentary time, maximising the opportunities for mischief-making (as a government might see it) for those who are opposed to all things European or in any event the contents of this Directive and those who, while not in

principle opposed to this Directive, wish to occupy as much Parliamentary time as possible so as to inhibit the passing of other legislation to which they are opposed.

Article 1

Since such rights to privacy as exist in English law are not to be found in any code but are rather scattered in various bits of legislation and assorted decisions of the courts, it is a major and difficult task to answer this question. I would not be surprised if the implementation of the Directive involves some changes in the level of protection given to some individuals in some circumstances.

Article 2

This contains definitions which are not identical with those in the Act. There may well be a need for new definitions.

Article 3

The Act does not cover non-automated data. The general law has developed in an incremental way over the centuries and gives some rights of privacy to confidential matter. The general law is widely perceived as not safeguarding privacy adequately. The Act has exemptive provisions in relation to national security, crime and taxation.

Article 6

As will have been observed from a reading of the Principles above, these are broadly similar to those set out in Article 6.

Article 7

The Act contains no express provisions corresponding to Article 7. The relevant limitations are set out in the Principles. It may be that some measure of alteration to domestic law will be required in order to give effect to the Directive.

Article 8

There is no clear equivalent in English law to Article 8. For a start, as indicated above, the Act only applies to automated data. Even in the field of automated data the directive goes further than the Act both in what it prohibits and in the qualifications on that prohibition. Again some measure of alteration of domestic law will be required. However Part IV of the Act does make special provision for personal data arising in the field of crime and taxation, health and social work, regulation of financial services, judicial appointments, examination marks etc.. An amusing light is shone on national priorities when one notes that specific provision is made in the Act for data held by members clubs but there is nothing equivalent to the wide provisions in Article 8(2)(d). Noticeable, as a matter of legislative technique, is s.2(3) of the Act which provides in relation to the Data Protection Principles:-

The Secretary of State may by order modify or supplement those principles for the purpose of providing additional safeguards in relation to personal data consisting of information as to -

- (a) the racial origin of the data subject;

- (b) his political opinions or religious or other beliefs;
- (c) his physical or mental health or his sexual life; or
- (d) his criminal convictions;

These powers have not yet been used.

We have no specific law governing the processing of identifiers of general application. It is still possible in the UK to live lawfully without possessing an identity card.

Article 9

The Act contains no exemptions for journalism or artistic or literary expression.

Articles 10&11

The Act provides in s.21 certain rights for the data subject to have access to personal data held by a data user. Failure to provide a proper system for this would be a breach of the seventh Principle and could lead to refusal of registration or deregistration. Further rights are given by the 1987 and 1990 Acts referred to in the introduction to this part of the Report. But under current UK law it is for the individual to find the data user, to make application for information and to proffer an appropriate fee. At first sight it seems that articles 10 and 11 put the burden of disclosure more firmly on the controller's shoulders.

8.33(6) of the Act makes provisions similar to those contained in Article 11(2) as regards statistics and research.

Article 12

Part III of the Act gives data subjects rights to gain access to data held about them. However the detailed provisions in Article 12 are not all present. Thus there is no provision corresponding to the third indent of paragraph (a) relating to knowledge of the logic involved in the automatic processing of data.

Article 13

The exemptions to the right of access provided by Article 13 are broadly comparable to those found in the Act.

Articles 14&15

While the application of the Principles and the compensation for unauthorised disclosure provided for in s.23 gives the data subject some protection, the Act contains no express provisions corresponding to Articles 14 & 15.

Article 17

The Principles restrict unauthorised disclosure and require the taking of appropriate security measures and the Act provides for compensation in the event of unauthorised disclosure - s.23. The Act gives no further guide as to what may be appropriate when considering the level of security.

Article 18

The Act in principle requires all holders of personal data to be entered on a register. There are limited exceptions chiefly in respect of persons only holding personal data for payroll and accounts purposes - s.32 - and individuals holding personal data concerned with the management of their personal, family and household affairs -s.33. there seems no conflict with Article 18.

Article 20

Prior checking is not a requirement of the Act.

Article 21

The register is available for inspection by members of the public - s.9. S.4(3) sets out the material which is to be in the register. In consequence the register should correspond broadly with what is required by Article 21.

Article 22-23

Where data subjects believe that the Principles have been breached, they may complain to the registrar. He has the power to investigate such complaints and can issue an enforcement notice requiring action to be taken by the data user in order to comply with the Principles. S21(8) gives individuals the right to go to court and ask for a discretionary order giving them access to their personal data. The courts can award compensation for inaccuracy, for loss and for unauthorised disclosure -ss 22 & 23. The courts can order rectification or erasure of data - s.24.

Article 24

Failure to register can lead to criminal penalties - s.5(1). Failure to comply with an Enforcement Notice gives rise to criminal penalties s.10(9). Failure to comply with the Principles can lead to deregistration - s.11.

Article 27

S.36(4) makes it the duty of the Registrar, where she considers it appropriate to do so, to encourage trade associations and other bodies representing data users to prepare, and to disseminate to their members, codes of practice for guidance in complying with the Principles.

Article 28

The Registrar has broadly the sort of powers envisaged by this article for the supervisory authority by the Directive.