

GREFFE
ROYAL COURT
12 JUL 2002
GUERNSEY

GUERNSEY STATUTORY INSTRUMENT

2002 NO. 16

The Data Protection (Subject Access Modification) (Social Work) Order, 2002

Made

9th July, 2002

Coming into operation

1st August, 2002

Laid before the States

2002

THE STATES ADVISORY AND FINANCE COMMITTEE, in exercise of the powers conferred on it by sections 30(3) and (4) and 66(2) of the Data Protection (Bailiwick of Guernsey) Law, 2001^a and all other powers enabling it, and after consultation with the Data Protection Commissioner in accordance with section 66(3) of that Law, hereby makes the following Order -

Personal data to which Order applies.

1. (1) Subject to paragraph (2), this Order applies to personal data falling within any of the descriptions set out in paragraphs 1 and 2 of the Schedule.

(2) This Order does not apply -

- (a) to any data consisting of information as to the physical or mental health or condition of the data subject to which the Data Protection (Subject Access Modification) (Health) Order, 2002 or the Data Protection (Subject Access Modification) (Education) Order, 2002 applies; or

^a

Order in Council No. V of 2002.

- (b) to any data which are exempted from section 7 by an order made under section 38(1) of the Law.

Exemption from the subject information provisions.

2. Personal data to which this Order applies by virtue of paragraph 2 of the Schedule are exempt from the subject information provisions.

Exemptions from section 7.

3. (1) Personal data to which this Order applies by virtue of paragraph 1 of the Schedule are exempt from section 7(1)(b) to (d) of the Law in any case to the extent to which the application of those provisions would be likely to prejudice the carrying out of social work by reason of the fact that serious harm to the physical or mental health or condition of the data subject or any other person would be likely to be caused.

(2) Where any person falling within paragraph (3) is enabled by or under any enactment or rule of law to make a request on behalf of a data subject and has made such a request, personal data to which this Order applies are exempt from section 7 in any case to the extent to which the application of that section would disclose information -

- (a) provided by the data subject in the expectation that it would not be disclosed to the person making the request;
- (b) obtained as a result of any examination or investigation to which the data subject consented in the expectation that the information would not be so disclosed; or
- (c) which the data subject has expressly indicated should

not be so disclosed,

provided that sub-paragraphs (a) and (b) shall not prevent disclosure where the data subject has expressly indicated that he no longer has the expectation referred to therein.

- (3) A person falls within this paragraph if -
 - (a) the data subject is a child, and that person has parental responsibility for that data subject; or
 - (b) the data subject is incapable of managing his own affairs and that person has been appointed by a court to manage those affairs.

Further modifications of section 7.

4. (1) In relation to data to which this Order applies by virtue of paragraph 1 of the Schedule -

- (a) section 7(4) of the Law shall have effect as if the full stop at the end of paragraph (b) were deleted and there were inserted immediately after the word "individual" -

"; or
- (c) the other individual is a relevant person.";
- (b) section 7(9) shall have effect as if -
 - (i) there were substituted -

“(9) If a court is satisfied on the application of -

- (a) any person who has made a request under the foregoing provisions of this section, or
- (b) any person to whom serious harm to his physical or mental health or condition would be likely to be caused by compliance with any such request in contravention of those provisions,

that the data controller in question is about to comply with or has failed to comply with the request in contravention of those provisions, the court may order him not to comply or, as the case may be, to comply with the request.”; and

- (ii) the reference therein to a contravention of the foregoing provisions of that section included a reference to a contravention of the provisions contained in this Order.

(2) After section 7(11) of the Law insert -

“(12) A person is a relevant person for the purposes of subsection (4)(c) if he is or has been employed by the States in connection with functions which are or have been exercised in relation to the data consisting of the information and the information relates to him or he supplied the information in his official capacity.”

Interpretation.

5. (1) In this Order, unless the context otherwise requires -

“**an instrument**” means any order (including any Order of the Royal Court), regulations, rules or other subsidiary legislative instrument;

“**the Law**” means the Data Protection (Bailiwick of Guernsey) Law, 2001;

“**request**” means a request made under section 7; and

“**section 7**” means section 7 of the Law.

(2) The provisions of the Interpretation (Guernsey) Law, 1948^b apply to the interpretation of this Order -

(a) throughout the Bailiwick; and

(b) as they apply to the interpretation of an enactment.

(3) Unless the context otherwise requires, references in this Order to an enactment or instrument are references thereto as amended, re-enacted (with or without modification), extended or applied.

(4) Unless the context otherwise requires -

(a) a reference in this Order to a numbered article is a reference to the article of this Order which is so numbered; and

(b) a reference in a provision of this Order to a numbered paragraph is a reference to the paragraph of that

^b Ordres en Conseil Vol. XIII, p. 355.

provision which is so numbered.

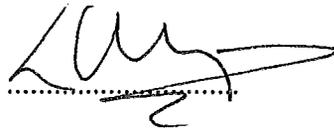
Citation.

6. This Order may be cited as the Data Protection (Subject Access Modification) (Social Work) Order, 2002.

Commencement.

7. This Order shall come into force on the 1st August, 2002.

Dated this 9th day of July, 2002.

A handwritten signature in black ink, appearing to be 'L. C. Morgan', written over a horizontal dotted line. The signature is stylized and extends to the right.

L. C. MORGAN

President of the States Advisory and Finance Committee

For and on behalf of the Committee.

SCHEDULE

Article 1

PERSONAL DATA TO WHICH THIS ORDER APPLIES

1. This paragraph applies to personal data falling within any of the following descriptions -

- (a) data processed by the States Housing Authority or any other person in connection with the allocation of housing or other residential accommodation;
- (b) data processed by the States Social Security Authority in connection with the payment of supplementary benefit under the Supplementary Benefit (Guernsey) Law, 1971^c;
- (c) data processed by the States Children Board in connection with the carrying out of its functions under the States Children Board and Public Assistance (Amendment) (Guernsey) Law, 1970^d.

2. (1) This paragraph applies to personal data processed by a court and consisting of information -

- (a) supplied in a report or other evidence given to the court by or on behalf of -

^c Ordres en Conseil Vol. XXIII, p. 26; Vol. XXVI, p. 292 and Recueil d'Ordonnances Vol. XXIV, p. 468; Vol. XXVI, p. 177.

^d Ordres en Conseil Vol. XXI, p. 521; Vol. XXXII, p. 155.

- (i) a probation officer;
- (ii) a medical practitioner;
- (iii) an educational establishment;
- (iv) a Committee of the States; or
- (v) any other person or body,

in the course of any proceedings relating to families or children; and

- (b) which the court directs should be withheld from the data subject on the ground that -
 - (i) it appears to it impracticable to disclose the report having regard to his age and understanding; or
 - (ii) undesirable to do so having regard to potential serious harm which might thereby be suffered by him.

(2) For the purposes of this paragraph, the expression **“proceedings relating to families or children”** includes any court proceedings to which the following Orders of the Royal Court apply -

- (a) the Adoption Rules, 1961^e;

^e O.R.C. Vol. I, pp. 180 and 222 and No. I of 1968.

- (b) the Adoption (Alderney) Rules^f;
- (c) the Court of Appeal (Guardianship Proceedings) (Appeals) Rules, 1979^g
- (d) the Domestic Proceedings and Magistrate's Court Rules, 1989^h;
- (e) the Juvenile Court (Criminal Cases) Rules, 1990ⁱ;
- (f) the Matrimonial Causes Rules, 1952^j.

f O.R.C. No. I of 1974.

g O.R.C. No. II of 1979.

h O.R.C. No. IX of 1989 and No. I of 1993.

i O.R.C. No. III of 1990 and No. I of 1994.

j O.R.C. Vol. I, p. 64; No. I of 1973; No. I of 1980; No. IV of 1983; No. I of 1986 and No. I of 2001.

EXPLANATORY NOTE.

(This note is not part of the Order)

This Order provides for the partial exemption from the provisions of the Data Protection (Bailiwick of Guernsey) Law 2001, which confer rights on data subjects to gain access to data held about them, of certain data where the exercise of those rights would be likely to prejudice the carrying out of social work by causing serious harm to the physical or mental health or condition of the data subject or another person (article 1(1)). The Order does not apply to any data to which the Data Protection (Subject Access Modification) (Health) Order 2002 (G.S.I. xxx/2002), the Data Protection (Subject Access Modification) (Education) Order 2002 (G.S.I. xxx/2000) or any order made under section 38(1) of the Law applies (article 1(2)).

In the case of court reports in certain proceedings where information in the report is directed to be withheld by the court, article 2 of, and paragraph 2 of the Schedule to, this Order provide a complete exemption from section 7 of the Law and also a complete exemption from the first data protection principle to the extent to which it requires compliance with paragraph 2 of Part II of Schedule 1 to the Law (which confers obligations on data controllers to give certain information to data subjects relating to data held about them). In all other cases, article 3(1) confers an exemption from section 7(1)(b) to (d) of the Law, leaving the right of the data subject to be informed by any data controller whether data about him are being processed by or on behalf of that data controller.

Article 5 modifies section 7 of the Law so that a data controller cannot refuse access on the grounds that the identity of a third party would be disclosed in cases where the third party is a relevant person (as defined), unless serious harm to that relevant person's physical or mental health or condition is likely to be caused by giving access such that the exemption in article 3(1) applies.

A further exemption from section 7 of the Law is conferred by article 3(3) in certain circumstances where a third party is making the request for access on behalf of the data subject and the data subject does not wish that information to be disclosed to that third party.

By virtue of paragraph 1 of the Schedule to this Order, it principally applies to data processed by the States Housing Authority and any other body for the purposes of the allocation of housing or other residential accommodation; the States Social Security Authority for supplementary benefit purposes and the Children Board for all its functions.