

GUERNSEY STATUTORY INSTRUMENT

2002 NO. 18

The Data Protection (Further Conditions concerning Fair Processing) Order, 2002

<i>Made</i>	<i>9th July, 2002</i>
<i>Coming into operation</i>	<i>1st August, 2002</i>
<i>Laid before the States</i>	<i>2002</i>

THE STATES ADVISORY AND FINANCE COMMITTEE, in exercise of the powers conferred on it by sections 66(2) of, and paragraph 3(1) of Part II of Schedule 1 to, 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 -

General provisions.

1. (1) In cases where the primary condition referred to in paragraph 3(2)(a) of Part II is met, the provisions of articles 2 and 3 apply.

(2) In cases where the primary condition referred to in paragraph 3(2)(b) of Part II is met by virtue of the fact that the recording of the information to be contained in the data by, or the disclosure of the data by, the data controller is not a function conferred on him by or under any enactment or an obligation imposed on him by order of a court, but is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract, the provisions of article 2 apply.

Notices in writing.

^a Order in Council No. V of 2002.

2. (1) One of the further conditions prescribed in paragraph (2) must be met if paragraph 2(1)(b) of Part II is to be disapplied in respect of any particular data subject.

(2) The conditions referred to in paragraph (1) are that -

(a) no notice in writing has been received at any time by the data controller from an individual, requiring that data controller to provide the information set out in paragraph 2(3) of Part II before the relevant time (as defined in paragraph 2(2) of Part II) or as soon as practicable after that time; or

(b) where such notice in writing has been received but the data controller does not have sufficient information about the individual in order readily to determine whether he is processing personal data about that individual, the data controller shall send to the individual a written notice stating that he cannot provide the information set out in paragraph 2(3) of Part II because of his inability to make that determination, and explaining the reasons for that inability.

(3) The requirement in paragraph (2) that notice should be in writing is satisfied where the text of the notice -

(a) is transmitted by electronic means;

(b) is received in legible form; and

- (c) is capable of being used for subsequent reference.

Further condition in cases of disproportionate effort.

3. (1) The further condition prescribed in paragraph (2) must be met for paragraph 2(1)(b) of Part II to be disappplied in respect of any data.

(2) The condition referred to in paragraph (1) is that the data controller shall record the reasons for his view that the primary condition referred to in article 1(1) is met in respect of the data.

Interpretation.

4. (1) In this Order, unless the context otherwise requires "Part II" means Part II of Schedule 1 to the Data Protection (Bailiwick of Guernsey) Law, 2001.

(2) 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 provision which is so numbered.

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

(a) throughout the Bailiwick; and

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

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

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

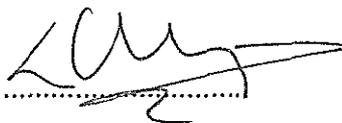
Citation.

5. This Order may be cited as the Data Protection (Further Conditions concerning Fair Processing) Order, 2002.

Commencement.

6. 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 read 'L. C. Morgan', written over a horizontal dotted line.

L. C. MORGAN

President of the States Advisory and Finance Committee

For and on behalf of the Committee.

EXPLANATORY NOTE.

(This note is not part of the Order)

Paragraph 2 of Part II of Schedule 1 to the Data Protection (Bailiwick of Guernsey) Law 2001 ("Part II") provides that personal data will not be treated as processed fairly unless certain requirements are met relating to the provision to the data subject of information about the processing ("the information requirements"). Different provisions apply depending on whether data have been obtained from the data subject or from some other source.

Paragraph 3 of Part II sets out conditions which, if met, allow the data controller to disregard the information requirements in cases where the data have been obtained from a source other than the data subject. Power is given to the States Advisory and Finance Committee to prescribe further conditions which must be met before the information requirements can be disregarded in this way.

Article 2 of this Order prescribes further conditions for cases where the disproportionate effort ground in paragraph 3(2)(a) of Part II is being relied upon, or where the disclosure or recording of the data is necessary for compliance with a legal obligation, other than one imposed by contract or by or under an enactment or by a court order. In both cases, the Order provides that any data controller claiming the benefit of the disapplication of the information requirements must still provide the relevant information to any individual who requests it. Further, if a data controller cannot readily determine whether he is processing information about the individual concerned because of a lack of identifying information, that data controller must write to the individual explaining the position. In the former case only (disproportionate effort), article 3 of this Order provides for a further condition to be met: the data controller must keep a record of the reasons why he believes the disapplication of the information requirements is necessary.