

GREFFIER
ROYAL COURT
12 JUL 2002
GUERNSEY

GUERNSEY STATUTORY INSTRUMENT

2002 NO. 21

**The Data Protection (Functions of Designated Authority)
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 54(2) 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 -

Co-operation between the Commissioner and foreign designated authorities.

1. (1) The Commissioner shall, at the request of a foreign designated authority, furnish to that foreign designated authority such information referred to in Article 13(3)(a) of the Convention, and in particular the data protection legislation in force in the Bailiwick at the time the request is made, as is the subject of the request.

(2) The Commissioner shall, at the request of a foreign designated authority, take appropriate measures in accordance with Article 13(3)(b) of the Convention, for furnishing to that foreign designated authority information relating to the processing of personal data in the Bailiwick.

^a Order in Council No. V of 2002.

(3) The Commissioner may request a foreign designated authority to furnish to him or, as the case may be, to take appropriate measures for furnishing to him, the information referred to in Article 13(3) of the Convention.

Persons resident outside the Bailiwick.

2. (1) This article applies where a person resident outside the Bailiwick makes a request to the Commissioner under Article 14 of the Convention, including a request forwarded to the Commissioner through a foreign designated authority, seeking assistance in exercising any of the rights under Article 8 of the Convention.

(2) If the request -

- (a) seeks assistance in exercising the rights under section 7 of the Law; and
- (b) does not indicate that the data controller has failed, contrary to section 7 of the Law, to comply with the same request on a previous occasion,

the Commissioner shall notify the requesting person of the data controller's address for the receipt of notices from data subjects exercising their rights under that section and of such other information as the Commissioner considers necessary to enable that person to exercise his rights under that section.

(3) If the request indicates that a data protection principle has been contravened by a data controller the Commissioner shall either -

- (a) notify the requesting person of the rights of data subjects and the remedies available to them under Part II of the Law together with such particulars as are

contained in the data controller's entry in the register as are necessary to enable the requesting person to avail himself of those remedies; or

- (b) if the Commissioner considers that notification in accordance with sub-paragraph (a) would not assist the requesting person or would, for any other reason, be inappropriate, treat the request as if it were a request for an assessment which falls to be dealt with under section 42 of the Law.

(4) The Commissioner shall not be required, in response to any request referred to in paragraphs (2) and (3) above, to supply to the requesting person a duly certified copy in writing of the particulars contained in any entry made in the register other than on payment of such fee as is prescribed for the purposes of section 19(7) of the Law.

Persons resident in the Bailiwick.

3. (1) Where a request for assistance in exercising any of the rights referred to in Article 8 of the Convention in a country or territory (other than the Bailiwick) specified in the request is made by a person resident in the Bailiwick and submitted through the Commissioner under Article 14(2) of the Convention, the Commissioner shall, if he is satisfied that the request contains all necessary particulars referred to in Article 14(3) of the Convention, send it to the foreign designated authority in the specified country or territory.

(2) If the Commissioner decides that he is not required by paragraph (1) above to render assistance to the requesting person he shall, where practicable, notify that person of the reasons for his decision.

Restrictions on use of information.

4. Where the Commissioner receives information from a foreign designated authority as a result of either -

(a) a request made by him under article 1(3) above; or

(b) a request received by him under articles 1(2) or 4 above,

the Commissioner shall use that information only for the purposes specified in the request.

Interpretation.

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

“**foreign designated authority**” means an authority designated for the purposes of Article 13 of the Convention (other than the authority designated in respect of the Bailiwick) by a party which is bound by that Convention;

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

“**register**” means the register maintained under section 19(1) of the Law;

“**request**”, except in article 1, means a request for assistance under Article 14 of the Convention which states -

(a) the name and address of the person making the request;

(b) particulars which identify the personal data to which the request relates;

- (c) the rights under Article 8 of the Convention to which the request relates;
- (d) the reasons why the request has been made; and

“requesting person” means a person making a request.

(2) In this Order, references to the Commissioner are to the Commissioner as the designated authority in the Bailiwick for the purposes of Article 13 of the Convention.

(3) 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.

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

(5) 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

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

paragraph is a reference to the paragraph of that provision which is so numbered.

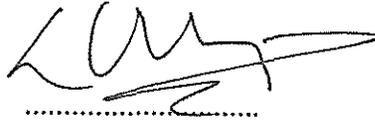
Citation.

6. This Order may be cited as the Data Protection (Functions of Designated Authority) 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 read 'L. C. Morgan', written over a 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)

Section 54(1) of the Data Protection (Bailiwick of Guernsey) Law 2001 ("the Law") provides that the Data Protection Commissioner ("the Commissioner") shall continue to be the designated authority in the Bailiwick for the purposes of Article 13 of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data which was opened for signature on 28th January 1981 ("the Convention"). Section 54(2) provides that the States Advisory and Finance Committee may by order make provision as to the functions to be discharged by the Commissioner in that capacity.

This Order specifies those functions. In particular, article 1 requires the Commissioner to furnish particular information to the designated authorities in other Convention countries and also provides that he may request such authorities to furnish him with information. Article 2 requires the Commissioner to assist persons resident outside the Bailiwick in exercising certain of their rights under Part II of the Law. In the circumstances specified in article 2(2), he is required to notify a resident outside the Bailiwick of certain of the rights and remedies available under Part II of the Law or to treat any request made to him by such a resident as a request for an assessment to be dealt with under section 42 of the Law. Article 3 provides that if a request for assistance in exercising, *inter alia*, rights of access to personal data in a Convention country is made by a person resident in the Bailiwick and submitted to the Commissioner, the Commissioner will send the request to the designated authority in that country.

The Convention is published in the UK Treaty Series at no. 86 of 1990, Cm 1329. It entered into force in respect of the United Kingdom on 1st December 1987 and its provisions have been extended to the Bailiwick.