

Island of



Guernsey

Ordinance of the States

II
2010

Made27th January, 2010

Coming into Operation1st March, 2010

The Data Protection (Bailiwick of Guernsey) (Amendment) Ordinance, 2010

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THE STATES, in pursuance of their Resolutions of the 27th September, 2006^a and the 26th November, 2009^b, and in exercise of the powers conferred on them by sections 66 and 69 of the Data Protection (Bailiwick of Guernsey) Law, 2001^c and sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^d, hereby order:-

Amendment of the 2001 Law.

1. The Data Protection (Bailiwick of Guernsey) Law, 2001 ("**the 2001 Law**") is amended as follows.

Amendment of section 1.

2. In section 1(1) (basic interpretative provisions) of the 2001 Law, for the definition of "**personal data**" substitute -

"**personal data**" means data which relate to a living individual who can be identified -

(a) from those data, or

^a Article XIV of Billet d'État No. XVI of 2006.

^b Article XVIII of Billet d'État No. XXXI of 2009.

^c Order in Council No. V of 2002 as modified by Ordinance No. XXIV of 2004, the European Communities (Implementation of Council Directive on Privacy and Electronic Communications) (Sark) Ordinance, 2004 and G.S.I. Nos.14, 15, 16 and 24 of 2002.

^d Order in Council No. III of 1994.

- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and

includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual,".

Insertion of new section 6A.

3. After section 6 (the Commissioner) of the 2001 Law, insert the following section -

"Exclusion of liability.

6A. No liability shall be incurred by -

- (a) the Commissioner in respect of anything done or omitted to be done in the discharge or purported discharge of his functions, or
- (b) any person whom the Commissioner has, under the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991, arranged to carry out a function of the Commissioner, in respect of anything done or omitted to be done in the discharge or purported discharge of such a function,

unless the thing was done or omitted to be done in bad faith."

Amendment of section 7(10).

4. In section 7(10) of the 2001 Law, for the words "that section" substitute "this section".

Repeal of section 15(2).

5. Section 15(2) (whether section 7(9) applicant is entitled to information) of the 2001 Law is repealed.

Amendment of references to committees of the States.

6. (1) In section 29(5)(d) of the 2001 Law, for paragraph (d) substitute the following paragraph -

"(d) a department of the States or a committee of the States of Alderney or the Chief Pleas of Sark, or".

(2) In section 31(3)(b) of the 2001 Law, for the words "or committee of the States" substitute ", a department of the States or a committee of the States of Alderney or the Chief Pleas of Sark".

(3) In paragraph 5(c) of Schedule 2 and paragraph 7(1)(c) of Schedule 3 of the 2001 Law, for the words "or a committee of the States" substitute ", a department of the States or a committee of the States of Alderney or the Chief Pleas of Sark".

Amendment of section 34(2).

7. In section 34(2) (definition of "**public information**") of the 2001 Law, at the end of paragraph (a) omit the word "and" and after paragraph (b) add the following word and paragraph -

", and

(c) information held on a public register."

Amendment of section 43.

8. In section 43 (information notices) of the 2001 Law -

(a) for subsection (1) substitute -

"43. (1) If the Commissioner -

(a) has received a request under section 42 in respect of any processing of personal data, he may serve the data controller,

(b) reasonably requires any information for the purpose of determining whether a data controller has complied or is complying with the data protection principles, he may serve the data controller, or

(c) whilst undertaking an assessment as to whether it is likely or unlikely that processing of personal data by a data controller complies with this Law, has reasonable grounds for suspecting that another data controller or a data processor holds information that would assist in determining whether the data controller has complied, or is complying, with

the data protection principles, he may serve
the other data controller or the data processor,

with a notice (in this Law referred to as "**an information notice**") requiring the data controller in question or the data processor, as the case may be, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the request or to compliance with the principles as is so specified.", and

- (b) in subsection (2) -
 - (i) at the end of paragraph (a), omit the word "or", and
 - (ii) after paragraph (b), add -

", or
- (c) in a case falling within subsection (1)(c), a statement that the Commissioner has reasonable grounds for suspecting that the other data controller or the data processor, as the case may be, holds the specified information and that the Commissioner regards it as relevant for the purpose of determining whether the data controller has

complied, or is complying, with the data protection principles and the Commissioner's reasons -

- (i) for so suspecting that the other data controller or the data processor holds such information, and
- (ii) for regarding it as relevant for that purpose."

Amendment of section 54(4).

9. In section 54(4) (international co-operation) of the 2001 Law, omit the word "also".

Amendment of section 55(2).

10. In section 55(2) of the 2001 Law (unlawful obtaining etc. of personal data), at the end of paragraph (c) omit the word "or" and after paragraph (c) insert the following paragraph -

"(ca) that he acted -

- (i) for the special purposes,
- (ii) with a view to the publication by any person of any journalistic, literary or artistic material, and
- (iii) in the reasonable belief that in the

particular circumstances the obtaining, disclosing or procuring was justified as being in the public interest, or".

Amendment of section 56(5).

11. In section 56(5) (definition of "relevant record") of the 2001 Law, at the end insert "but excludes a disclosure issued by or on behalf of the Chief Officer of Police which complies with any relevant code of practice issued by the Commissioner under section 51(3)".

Amendment of section 60.

12. In section 60 (prosecutions and penalties) of the 2001 Law -

- (a) in subsection (1), after the words "other than" insert "section 55 and", and
- (b) after subsection (1) add the following subsection -

"(1A) A person guilty of an offence under section 55 is liable-

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
- (b) on conviction on indictment, to imprisonment for a term not

exceeding two years, or to a fine, or to both."

Substitution of section 62.

13. For section 62 (application to committees of the States) of the 2001 Law substitute the following section -

"Application to the Crown, departments and committees.

62. (1) This Law binds the Crown and is applicable to any department of the States and any committee of the States of Alderney or the Chief Pleas of Sark.

(2) For the purposes of the Law each such department of the States or committee shall be taken to be a separate person.

(3) Where any notice under this Law is served on a department of the States, or any committee of the States of Alderney or the Chief Pleas of Sark, by means of service on the chief officer of such a department or the chairman of such a committee in accordance with section 65(1), that chief officer or chairman, as the case may be, shall ensure that, if such a notice requires compliance, it is complied with."

Amendment of section 65(1).

14. In section 65 (service of notices by Commissioner) of the 2001 Law, at the end of subsection (1) add the following paragraphs -

"(c) if that person is a department of the States, be served on that department -

(i) by sending it by post to the chief

officer (however named) of that department at that department's principal office, or

(ii) by addressing it to the chief officer (however named) of that department and leaving it at that office,

(d) if that person is a committee of the States of Alderney or the Chief Pleas of Sark, be served on that committee -

(i) by sending it by post to the chairman of that committee (however named) at that committee's principal office, or

(ii) by addressing to the chairman (however named) of that committee and leaving it at that office."

Amendment of section 67(1).

15. In section 67(1) (interpretation and supplementary definitions) of the 2001 Law -

(a) for the definition of "**committee of the States**" substitute -

"committee of the States of Alderney or the Chief Pleas of Sark" means any committee (however named) of the States of Alderney or the Chief Pleas

of Sark,"

- (b) after the definition of **"the Data Protection Directive"** insert the following definition -

"department of the States" means any department, council or committee (however named) of the States,"

- (c) for the definition of **"health professional"** substitute -

"health professional" means -

- (a) the States of Guernsey Health and Social Services Department, and

- (b) any person who -

- (i) practises, or holds himself out as practising or being prepared to practise, as a regulated health professional, or

- (ii) uses any regulated title,

within the meaning of the Registered Health Professionals Ordinance, 2006," and

Directive) (Guernsey) Ordinance, 2004^e is amended as follows.

(2) In paragraph 4 of schedule 1, for item (a) substitute -

"(a) for subsections (1) and (2) substitute the following -

"(1) If the Commissioner -

(a) reasonably requires any information for the purpose of determining whether a person has complied, or is complying, with the relevant requirements, he may serve that person, or

(b) whilst undertaking an assessment as to whether or not a person has complied or is complying with the relevant requirements, has reasonable grounds for suspecting that another person holds information that would assist in determining whether the person being assessed has complied, or is complying, with the relevant requirements, he may serve that other person,

with a notice (in this Law referred to as "an information

^e Ordinance No. XXIV of 2004.

notice") requiring him, within such time as may be specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to compliance with the relevant requirements as may be so specified.

- (2) An information notice must contain -
 - (a) in a case falling within subsection (1)(a), a statement that the Commissioner regards the specified information as relevant for the purpose of determining whether the person has complied, or is complying, with the relevant requirements and his reason for regarding it as relevant for that purpose,
 - (b) in a case falling within subsection (1)(b), a statement that the Commissioner has reasonable grounds for suspecting that the other person holds the specified information and that the Commissioner regards it as relevant for the purpose of determining whether the person being assessed has complied, or is complying, with the relevant requirements and his reasons -

- (i) for so suspecting that the person on whom the notice is served holds such information, and
- (ii) for regarding it as relevant for that purpose.";"

Interpretation.

19. (1) In this Ordinance, unless the context requires otherwise -

"**the 2001 Law**" means the Data Protection (Bailiwick of Guernsey) Law, 2001,

"**enactment**" means any Law, Ordinance or subordinate legislation, and

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect.

(2) The Interpretation (Guernsey) Law, 1948^f applies to the interpretation of this Ordinance throughout the Bailiwick.

(3) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

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

Extent.

20. This Ordinance has effect throughout the Bailiwick of Guernsey.

Citation.

21. This Ordinance may be cited as the Data Protection (Bailiwick of Guernsey) (Amendment) Ordinance, 2010.

Commencement.

22. This Ordinance shall come into force on the 1st day of March, 2010.

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Her Majesty's Greffier.

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