

Island of  Guernsey

# Ordinance of the States

V  
2000

Made .....

26th July, 2000

**The Data Protection (Office of Commissioner)  
Ordinance, 2000**

## **The Data Protection (Office of Commissioner) Ordinance, 2000**

THE STATES, in exercise of the powers conferred upon them by sections 35, 39 and 40 of the Data Protection (Bailiwick of Guernsey) Law, 1986<sup>a</sup>, hereby order:-

### **Establishment of Office of Data Protection Commissioner.**

1. (1) In part V of the Law the following section is inserted immediately before section 34:

#### **“The Data Protection Commissioner.**

33A. (1) For the purposes of this Law there shall be an office to be known as the office of the Data Protection Commissioner; and the holder of that office is referred to in this Law as “the Commissioner”.

(2) The Commissioner shall be appointed by the States of Deliberation on the nomination of the Committee.

(3) The terms and conditions of the Commissioner’s appointment shall be such as may from time to time be agreed between the Committee and the Commissioner, provided that none of those terms or conditions shall be-

- (a) inconsistent with any provision of Schedule 3 to this Law, or
- (b) construed so as to create a contract of employment or agency between the States and the Commissioner.

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<sup>a</sup> Ordres en Conseil Vol. XXIX, p.426

(4) The Commissioner is not a servant or agent of the States, but is a holder of public office and is under a duty to discharge the functions of that office with complete fairness, impartiality and independence.

(5) Schedule 3 to this Law has effect in relation to the Commissioner.”

(2) The following Schedule is inserted immediately after Schedule 2 to the Law:

**“ SCHEDULE 3**

Section 33A(5)

**THE DATA PROTECTION COMMISSIONER**

**Tenure of office.**

1. (1) Subject to the provisions of this paragraph, the Commissioner shall hold office for such term not exceeding five years as may be agreed between the committee and the Commissioner at the time of his appointment.

(2) The Commissioner may only be relieved of his office before the expiration of its full term, by the Committee:

(a) pursuant to a resolution of the States requiring the Committee so to do, or

(b) on receipt of a written request made by the Commissioner.

(3) When the Commissioner ceases to hold office by reason of the expiration of his term he shall be eligible for reappointment.

**Staffing, resources etc.**

2. (1) The Committee must make available to the Commissioner such number and descriptions of staff as he may reasonably require for the proper and effectual discharge of his functions.

(2) To the extent that the services of a States employee are made available to the Commissioner as required by this paragraph, it is hereby declared for the avoidance of doubt that for the purposes of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>b</sup> -

- (a) that employee is an officer responsible to the Commissioner,
- (b) the Commissioner may arrange for any of the functions of his office to be performed in his name by that employee to the extent permitted by section 4 of that Law.

(3) The Committee must provide for the Commissioner such accommodation and equipment, such secretarial and clerical services, and such other facilities, as he may reasonably request for the proper and effectual discharge of his functions.

(4) The costs of meeting the requirements of this paragraph, as also the agreed emoluments and expenses of the Commissioner, shall be paid by the Committee from the general revenue account of the States.

**Financial and accounting provisions.**

3. (1) All fees and similar sums received by the Commissioner in the exercise of his functions shall be paid by him to the Committee for the general revenue account of the States.

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<sup>b</sup> Order in Council No. XXI of 1991

(2) Subparagraph (1) of this paragraph does not apply if and to the extent that, in accordance with agreed financial procedures, the Committee may otherwise direct.

(3) The Commissioner must:

- (a) maintain proper accounts and proper records in relation to those accounts, and
- (b) furnish to the Committee, as often as the Committee may reasonably direct but not less frequently than once in any period of 12 months, a full and accurate statement of those accounts.

(4) For the purposes of the States Audit Commission (Guernsey) Law, 1997<sup>c</sup>, but only for those purposes, the office of the Data Protection Commissioner is deemed to be a department or operation conducted by the Committee.

**Oath of office.**

4. The Commissioner shall, upon his appointment or as soon as reasonably practicable thereafter, take an oath or make an affirmation before the Ordinary Court in the following terms or in words to the like effect:

“You [swear and promise on the faith and truth that you owe to God] [do solemnly, sincerely and truly declare and affirm] that you will well and faithfully discharge the functions of Data Protection Commissioner in accordance with law; that you will exercise the powers entrusted to you only as appears necessary to you for the due discharge of those functions;

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<sup>c</sup> Order in Council No. XXIII of 1997.

and that you will not disclose any information received by you in the discharge of those functions which to your knowledge may directly lead to the identification of any person, save to persons engaged in the discharge of those functions; pursuant to an express power conferred by or under the Data Protection (Bailiwick of Guernsey) Law, 1986; or in any other case required by law.”

**Annual report.**

5. The Commissioner must report in writing to the Committee at least once in every period of 12 months as to the discharge of his functions.

**Presumption of authenticity of documents.**

6. Any document purporting to be issued by the Commissioner and to be signed by or on behalf of the Commissioner shall be deemed to be such a document unless the contrary is shown.”.

**Consequential amendments.**

2. (1) In sections 12(2) and 16(3) of the Law, for “the President of the Committee”, wherever appearing, substitute “the Commissioner”.

(2) In section 15(1) of the Law, for “any officer of” substitute “any officer responsible to”.

(3) In section 34(4) of the Law, for “its functions” substitute “the Commissioner’s functions”.

(4) In section 41(1) of the Law:

(a) immediately after the definition of “business” insert –

“**the Commissioner**” means the person holding the office of Data Protection Commissioner established by section 33A(1);”

(b) immediately after the definition of “the European Convention” insert –

“**the Ordinary Court**” means the Royal Court of the Island of Guernsey sitting as an Ordinary Court;”.

(5) In paragraph 1(1) of Schedule 2 to the Law:

(a) for “by an officer or servant of the Committee” substitute “by the Commissioner or by an officer responsible to the Commissioner”;

(b) for “to any officer of the Committee” substitute “to the Commissioner, or to that officer,”.

(6) For every other reference in the Law (including the Schedules to the Law) to “the Committee”, apart from the references to the Committee in sections 3(8), 32(2), 34(4), 36, 40(2) 40(3) and 42 and the first reference to the Committee in section 40(5), substitute a reference to “the Commissioner”.

(7) For every reference to “the Committee” in -

(a) section 2(1) of the Data Protection (Subject Access Exemptions and Modifications) Ordinance, 1987<sup>d</sup>, and

(b) section 1 of, and the Schedule to, the Data Protection (Functions of Designated Authority) Ordinance, 1993<sup>e</sup>,

substitute a reference to “the Commissioner”

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<sup>d</sup> Recueil d’Ordonnances Tome XXIV, pp. 233 and 270

<sup>e</sup> Recueil d’Ordonnances Tome XXVI, p.163

(8) For the avoidance of doubt, the substitutions made by subsections (6) and (7) of this section extend to substituting, within the provisions thereby affected, “Commissioner’s” in place of “Committee’s”, “his” in place of “its”, and “he” or “him” in place of “it”, as the case requires.

**Transitional provisions.**

3. (1) This section shall apply on and after the effective date in relation to anything done or started before that date in connection with a transferred function; and subsections (2) to (5) of this section shall apply as if this Ordinance had applied on the date in question in each of those subsections.

(2) Any register entry made or transmitted, any notice served, and any other thing done by the Committee under a transferred function shall be deemed to have been made, transmitted, served or done by the Commissioner on the date when it was in fact made, transmitted, served or done.

(3) Any application under the Law which has been made to the Committee and has not been finally determined or withdrawn shall be deemed to have been made to the Commissioner on the date when it was in fact made.

(4) Any application under the Law which has been refused by the Committee shall be deemed (for the purpose of the right of any person to institute or prosecute an appeal as well as for all other purposes) to have been refused by the Commissioner on the date when it was in fact refused.

(5) Any information given to the Committee for the purpose of the Law shall be deemed to have been given to the Commissioner on the date when it was in fact given.

(6) Any legal proceedings in relation to a transferred function to which the Committee is a party may be continued as if the Commissioner were a party thereto instead of the Committee.

(7) Nothing done by or in relation to the Committee under or in consequence of a transferred function shall be invalidated by this Ordinance; and any such thing commenced by or in relation to the Committee may be carried on and completed by or in relation to the Commissioner.

**Interpretation and construction.**

4. (1) In this Ordinance, unless the context otherwise requires –

“**a transferred function**” means any power or duty previously vested in the Committee under the Law which becomes vested in the Commissioner by virtue of any amendment effected by section 2 of this Ordinance;

“**the effective date**” means the date on which this Ordinance comes into force for the purpose concerned;

“**the Law**” means the Data Protection (Bailiwick of Guernsey) Law, 1986 as amended, extended and applied by any other enactment, including this Ordinance;

and words and expressions defined in the Law have the same meanings in this Ordinance.

(2) This Ordinance is to be construed as one with the Law.

**Citation and commencement.**

5. This Ordinance shall come into force as follows:

(a) paragraph 2(7)(b), subsection 2(8) insofar as concerns paragraph 2(7)(b), and subsection 2(6) insofar as concerns section 35 of the Law, shall come into force on the day after publication by the Committee in La Gazette Officielle of a notice to the effect that the designation of the Commissioner for the purposes of Article 13 of the European Convention has been communicated in accordance with that Article;

(b) subsections 2(6) and 2 (8) for all other purposes, together with all other provisions of this Ordinance, shall come into force on the day after its approval by the States.