

Island of Guernsey

Ordinance of the States **XXXIII** 1987

Made 2nd November, 1987.
Coming into Operation ... 11th November, 1987.

The Data Protection (Subject Access Exemptions and Modifications) Ordinance, 1987

THE STATES LEGISLATION COMMITTEE, in exercise of the powers conferred upon it by sections 27, 28(2) and 40 of the Data Protection (Bailiwick of Guernsey) Law, 1986(a) and Article 66(3) of the Reform (Guernsey) Law, 1948(b), hereby orders:—

1. (1) The subject access provisions shall not have effect in relation to data consisting of information as to the physical or mental health of a data subject and held by a health professional if the application of those provisions would be likely—

Health exemptions.

- (a) to cause serious harm to the physical or mental health of the data subject or any other individual likely to obtain access to the information; or

(a) Order in Council No. XXXII of 1986.

(b) Ordres en Conseil Vol. XIII, p. 288.

- (b) to disclose the identity of another individual to whom the information relates or who is its source, or to lead to that identity being deduced from the information either alone or in combination with other information.

(2) Subsection (1) of this section applies to such data held by a person other than a health professional if—

- (a) the information constituting the data was first recorded by or on behalf of a health professional; and
- (b) that person has first consulted the medical practitioner or dentist who is currently or was most recently responsible for the clinical care of the data subject in connection with the matters to which the information relates, or, if none, a medical practitioner or dentist appearing to be suitably qualified to advise on those matters;

and a person who is not a health professional shall not supply such data in response to a request under section 19 of the Law without first consulting a medical practitioner or dentist as specified in paragraph (b) of this subsection.

Social work exemptions.

2. (1) Section 19(1)(b) of the Law and any power of the Committee exercisable by reference to paragraph (a)(ii) of the seventh data protection principle shall not have effect in relation to data specified in subsection (2) of this section if the application of those provisions would be likely to prejudice the carrying out of social work by reason of the fact that—

- (a) serious harm would be likely to be caused to the physical or mental health or emotional

condition of the data subject or any other individual likely to obtain access to the information constituting the data; or

- (b) the identity of another individual to whom the information relates or who is its source would be likely to be disclosed or to be deduced from that information either alone or in combination with other information.

(2) The data referred to in subsection (1) of this section are—

- (a) data held by the States of Guernsey Housing Authority in connection with the allocation of States housing accommodation;
- (b) data held by the States Insurance Authority in connection with the payment of supplementary benefit under the Supplementary Benefit (Guernsey) Law, 1971(c).

3. Nothing in section 1 or section 2 of this Ordinance excuses a data user—

Qualifica-
tions to
sections 1
and 2.

- (a) from supplying information on the ground that the identity of another individual is likely to be disclosed or deduced if—
 - (i) the individual has consented to the disclosure of the information; or
 - (ii) the individual is a health professional who has been involved in the care of the data subject and if the information relates to him, or if he supplied the information, in his capacity as a health professional; or

(iii) the individual is employed by a body specified in section 2(2) of this Ordinance or has performed social work services for reward for such a body and if the information relates to him, or if he supplied the information, in his official capacity or in connection with the provision of those services;

(b) from supplying such information as can be supplied (whether by the omission of names or other particulars or otherwise) without causing such serious harm, disclosure or deduction as is mentioned in those sections.

Consequen-
tial modifica-
tions to the
Law.

4. In relation to data to which section 1 or section 2 of this Ordinance applies section 19 of the Law shall have effect as if—

(a) subsection (4)(b) were omitted, and the reference in section 19(6) to the consent referred to in subsection (4)(b) were to the consent referred to in section 3(a)(i) of this Ordinance; and

(b) the reference in subsection (8) to a contravention of the foregoing provisions of that section included a reference to a contravention of this Ordinance.

Regulation of
financial
services
exemptions.

5. The functions designated for the purposes of section 28 of the Law (exemption from subject access provisions of data held for the purpose of discharging designated functions relating to the regulation of financial services etc.) are—

(a) the functions of the States of Guernsey Advisory and Finance Committee under the

Protection of Depositors, Companies and Prevention of Fraud (Bailiwick of Guernsey) Law, 1979(d) relating to—

- (i) the registration and regulation of persons who carry on, or hold themselves out as carrying on, the business of accepting money for the purpose of investment on deposit;
 - (ii) applications under section 11 of that Law (for permission to use certain words in the name of a business);
- (b) the functions of the States of Guernsey Advisory and Finance Committee under the Insurance Business (Guernsey) Law, 1986(e) relating to—
- (i) the registration of insurers;
 - (ii) the regulation (including winding-up) of registered insurers;
 - (iii) the authorisation and regulation of insurance managers.

6. (1) In this Ordinance, unless the context otherwise requires,— Interpretation.

“care” includes examination, investigation and diagnosis;

“health professional” means the States of Guernsey Board of Health and any medical practitioner, dentist, optician, pharmaceutical chemist or druggist, nurse, midwife, health visitor, chiropodist, dietician, occupational therapist, orthoptist, physiotherapist, clinical psychologist, child psychotherapist or speech therapist;

(d) Ordres en Conseil Vol. XXII, p. 28; Vol. XXVI, p. 25; No. XIII of 1986.

(e) Order in Council No. XIII of 1986.

“the Law” means the Data Protection (Bailiwick of Guernsey) Law, 1986;

“the subject access provisions” has the same meaning as in Part IV of the Law.

(2) Unless the context otherwise requires, a reference in this Ordinance to any other enactment includes a reference—

(a) to any Ordinance, Regulations, Order or Rules made under that enactment; and

(b) to that enactment as amended, repealed and replaced, extended or applied by or under any other enactment.

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

Citation.

7. This Ordinance may be cited as the Data Protection (Subject Access Exemptions and Modifications) Ordinance, 1987.

**Commence-
ment.**

8. This Ordinance shall come into force on the 11th November, 1987.

K. H. TOUGH,

Her Majesty's Greffier.