

ORDINANCE
OF THE STATES OF DELIBERATION

ENTITLED

The Electronic Census (Guernsey) Ordinance, 2013 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

© States of Guernsey

* No. XXX of 2013; as amended by the: Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 2013 (No. IV of 2014); States' Register of Contact Details (Guernsey and Alderney) Law, 2019 (No. IV of 2020); Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016).

ORDINANCE OF THE STATES OF DELIBERATION

ENTITLED

The Electronic Census (Guernsey) Ordinance, 2013

ARRANGEMENT OF SECTIONS

PART I PRELIMINARY

1. Appointment of supervisor.
2. Functions of supervisor.
3. Appointment of census officers.
4. Delegation of functions and powers.
5. Declaration of secrecy.
6. Revocation of appointments.
7. Power to give directions.

PART II ELECTRONIC CENSUS

8. Taking of electronic census.
9. Disclosure of information for purposes of electronic census.
10. Disclosure to be reasonably necessary for purpose of section 8.
11. Duty of confidentiality not contravened by disclosure to supervisor or census officer.
12. Custody of relevant data and documents.

PART III MISCELLANEOUS

13. Offences and penalties.
14. Defence of due diligence.
15. Interpretation.
16. Amendment of Income Tax (Guernsey) Law, 1975.
17. Amendment of Social Insurance (Guernsey) Law, 1978.
18. Amendment of Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984.

19. Citation.
20. Commencement.

SCHEDULE Form of declaration or secrecy to be made by supervisor and census officers.

(Made on 30th October, 2013.)

The Electronic Census (Guernsey) Ordinance, 2013

THE STATES, in pursuance of their Resolutions of the 28th July, 2010^a and 26th March, 2013^b and in exercise of the powers conferred on them by section 208C(1) of the Income Tax (Guernsey) Law, 1975^c, section 112B of the Social Insurance (Guernsey) Law, 1978^d, section 14 of the Disclosure (Bailiwick of Guernsey) Law, 2007^e and all other powers enabling them in that behalf, hereby order: –

PART I PRELIMINARY

Appointment of supervisor.

1. The [Policy & Resources Committee] may appoint a person, to be called the electronic census supervisor ("**the supervisor**").

NOTE

In section 1, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.

a Article IX of Billet d'État No. XVII of 2010.

b Article III of Billet d'État No. V of 2013.

c Ordres en Conseil Vol. XXV, p. 124. Section 208C was inserted by Order in Council No. V of 2011.

d Ordres en Conseil Vol. XXVI, p. 292. Section 112B was inserted by Order in Council No. V of 2012.

e Order in Council No. XVI of 2007; Recueil d'Ordonnances Tome XXXIII, p. 161; Ordinance Nos. XIV, XIX and XXXVII of 2010.

Functions of supervisor.

2. (1) The functions of the supervisor are –
- (a) to make such arrangements and to do all such things as are necessary for the taking of an electronic census,
 - (b) to collect, compile, analyse, abstract and publish statistical information relating to the commercial, industrial, financial, social, economic and general activities and condition of the populations of Guernsey and Alderney, and
 - (c) to carry out such other related functions as the [Policy & Resources Committee] may from time to time determine.
- (2) Without prejudice to the generality of subsection (1), the supervisor may –
- (a) design and use such electronic and other processes,
 - (b) make such directions, and
 - (c) issue such instructions,

as the supervisor thinks fit for the purposes of discharging his functions under this Ordinance.

NOTE

In section 2, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.

Appointment of census officers.

3. (1) The supervisor may, with the consent of the [Policy & Resources Committee], appoint such number of census officers as may appear to the supervisor to be necessary to assist in the discharge of the functions of the supervisor under this Ordinance.

(2) The duties of a person appointed under subsection (1) shall be such as the supervisor may from time to time determine.

NOTE

In section 3, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.

Delegation of functions and powers.

4. (1) The supervisor may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any of his functions and powers to be exercised in his name by any census officer named or described in the instrument, other than this power of delegation.

(2) A function or power exercised by a delegate pursuant to an arrangement made under this section is for all purposes exercised by the supervisor; and every decision taken or other thing done by a delegate pursuant to such an arrangement has the same effect as if taken or done by the supervisor.

(3) An arrangement made under this section for the exercise of a function or power by a delegate –

- (a) may be varied or terminated at any time by the supervisor, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,
- (b) does not prevent the exercise of the function or power by the supervisor while the arrangement subsists.

Declaration of secrecy.

5. Upon appointment under this Ordinance, or as soon as reasonably practicable thereafter –

- (a) the supervisor, and
- (b) a census officer,

shall make and sign a declaration of secrecy in the terms set out in the Schedule.

Revocation of appointments.

6. (1) The [Policy & Resources Committee] may revoke an appointment made under section 1.

(2) The [Policy & Resources Committee], or the supervisor, may revoke an appointment made under section 3.

NOTE

In section 6, the words "Policy & Resources Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.

Power to give directions.

7. (1) The [Policy & Resources Committee] may give to the supervisor such directions as it thinks fit with respect to the discharge of his functions under this Ordinance and such directions may be given generally or in respect of any particular case.

(2) The supervisor shall, in the discharge of his functions under this Ordinance, comply with any direction given under subsection (1).

NOTE

In section 7, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.

PART II
ELECTRONIC CENSUS

Taking of electronic census.

8. An electronic census using information disclosed under this Ordinance may be taken at any time by the supervisor.

Disclosure of information for purposes of electronic census.

9. Where disclosure for the purpose of section 8 is permitted under this Ordinance, or any other enactment, a department if so directed by the supervisor shall disclose to –

- (a) the supervisor, or
- (b) a census officer,

in such manner as the supervisor may direct, such information held by the department in question as is specified in writing by the supervisor.

(2) Subject to subsection (3), information disclosed under subsection (1) must not consist of personal data.

(3) Information disclosed under subsection (1) which consists of personal data –

(a) must not be further disclosed by the supervisor or a census officer, except –

(i) in the case of the supervisor, to a census officer,

(ii) in the case of a census officer, to the supervisor or another census officer, or

(iii) in the case of the supervisor or a census officer, to the department which provided the information,

(b) must be retained securely by the supervisor and every census officer in a manner that is consistent with the data protection principles, and

(c) must be destroyed by the supervisor once the information, in a form intended to protect the identity of a data subject, has been incorporated in an electronic census or is not required.

(4) Subject to any direction made by the supervisor under this

Ordinance a department, when disclosing any information for the purposes of an electronic census, shall do so in a manner reasonably intended to prevent any unauthorised person having access thereto.

[(5) Nothing in this section shall be taken to prohibit the supervisor from disclosing to the Registrar any designated information where required or authorised to do so under any provision of the States' Register of Contact Details (Guernsey and Alderney) Law, 2019.

(6) In subsection (5), "**designated information**" and "**the Registrar**" have the respective meanings given by section 25 of the States' Register of Contact Details (Guernsey and Alderney) Law, 2019.]

NOTE

In section 9, subsection (5) and subsection (6) were inserted by the States' Register of Contact Details (Guernsey and Alderney) Law, 2019, section 27(1), Schedule 5, with effect from 7th April, 2020, subject to the provisions of section 27(2) of the 2019 Law.

Disclosure to be reasonably necessary for purpose of section 8.

10. Only information that is reasonably necessary for the purpose of section 8 shall be disclosed further to a direction made by the supervisor under this Ordinance.

Duty of confidentiality not contravened by disclosure to supervisor or census officer.

11. (1) Subject to subsection (2), no obligation as to confidentiality or other restriction upon the disclosure of information imposed by contract or any rule of law is contravened by the making of a disclosure of information to the supervisor, or a census officer, in accordance with a direction made by the supervisor under this Ordinance.

(2) Subsection (1) does not apply to an obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute.

Custody of relevant data.

12. A person having the custody of relevant data obtained further to an electronic census shall keep the data in a manner reasonably intended to prevent any unauthorised person having access thereto.

PART III
MISCELLANEOUS

Offences and penalties.

13. (1) If a person –
- (a) without reasonable excuse, fails to comply with, or acts in contravention of, this Ordinance, or
 - (b) wilfully omits to perform his duties under this Ordinance,

he shall be guilty of an offence and liable on conviction to a fine not exceeding level 4 on the uniform scale.

- (2) If any person –
- (a) being the census supervisor or a census officer, without lawful authority publishes or communicates to any person otherwise than in the ordinary performance of his duties under this Ordinance any information

acquired by him in the performance of his duties, or

- (b) having possession of any information which to his knowledge has been disclosed in contravention of this Ordinance, publishes or communicates that information to any other person,

he shall be guilty of an offence and liable on conviction to a fine not exceeding level 5 on the uniform scale.

Defence of due diligence.

14. (1) In any proceedings for an offence under this Ordinance it shall, subject to subsection (2), be a defence for the person charged to prove that he took reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) If in any case the defence provided by subsection (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person shall not, without the leave of the court, be entitled to rely on that defence unless –

- (a) at least 7 clear days before the hearing, and
- (b) where he has previously appeared before the court in connection with the alleged offence, within one month of his first appearance,

he has served on Her Majesty's Procureur a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.

Interpretation.

15. In this Ordinance, unless the context requires otherwise –

"**census officer**" means a person appointed as a census officer under section 3(1),

"**data protection principles**" means the principles set out in Part I of Schedule 1 to the Data Protection (Bailiwick of Guernsey) Law, 2001^f,

"**data subject**" has the meaning given by section 1(1) of the Data Protection (Bailiwick of Guernsey) Law, 2001,

"**department**" means any department, council or committee (however called) of the States of Guernsey,

"**documents**" includes information recorded in any form (including, without limitation, information in an electronic communication and data held on computer files),

"**electronic census**" means a census taken in accordance with this Ordinance,

"**form**" includes an electronic form,

"**Her Majesty's Procureur**" includes Her Majesty's Comptroller,

"**person**" includes a department,

^f Ordres en Conseil Vol. XLII(1), p. 51; Ordinance No. II of 2010 and No. XXXIV of 2011.

"personal data" has the meaning given by section 1(1) of the Data Protection (Bailiwick of Guernsey) Law, 2001,

"[Policy & Resources Committee]" means the States of Guernsey [Policy & Resources Committee],

"relevant data" include documents and any information contained in a return,

"return" includes any form which the census supervisor may have directed or instructed to be used for the purpose of making a return under this Ordinance,

"the supervisor" means the person appointed as census supervisor under section 1, and

"unauthorised person" means a person who is not authorised by the supervisor or a department, or under any enactment or otherwise, to receive information or relevant data under this Ordinance.

NOTES

In section 15, the words in the first and second pairs of square brackets in the definition of the expression "Policy & Resources Committee" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.

The functions, rights and liabilities of the Policy Council and of its Minister or Deputy Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 10(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The Data Protection (Bailiwick of Guernsey) Law, 2001 has since been repealed by the Data Protection (Bailiwick of Guernsey) Law, 2017, section 113(a), with effect from 25th May, 2018, subject to the provisions of the Data Protection (Commencement, Amendment and Transitional) (Bailiwick of Guernsey) Ordinance, 2018.

Amendment of Income Tax (Guernsey) Law, 1975.

16. Immediately after section 206A of the Income Tax (Guernsey) Law, 1975 insert the following section –

"Disclosure of information to supervisor etc. under Electronic Census (Guernsey) Ordinance, 2013.

206AA. (1) Nothing in section 206, or in any oath taken in accordance with that section, precludes the Director of Income Tax from disclosing to –

- (a) the electronic census supervisor, or
- (b) any census officer,

appointed under the Electronic Census (Guernsey) Ordinance, 2013, for the purposes of enabling them to discharge their functions under that Ordinance, information relating to the income of any person.

(2) Information disclosed to the electronic census supervisor or any census officer under subsection (1) may, without prejudice to the provisions of the Electronic Census (Guernsey) Ordinance, 2013 restricting or authorising the disclosure and use of information, be used by them for the purposes mentioned in subsection (1)."¹

Amendment of Social Insurance (Guernsey) Law, 1978.

17. Immediately after section 111(3) of the Social Insurance (Guernsey) Law, 1978 insert the following subsections –

" (4) Nothing in this section shall be taken to prohibit the Administrator or any person authorised by him in that behalf from disclosing to –

- (a) the electronic census supervisor, or
- (b) any census officer,

appointed under the Electronic Census (Guernsey) Ordinance, 2013, for the purposes of enabling them to discharge their functions under that Ordinance, information relating to the income of any person.

(5) Information disclosed to the electronic census supervisor or any census officer under subsection (4) may, without prejudice to the provisions of the Electronic Census (Guernsey) Ordinance, 2013 restricting or authorising the disclosure and use of information, be used by them for the purposes mentioned in subsection (4)."

Amendment of [Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984].

18. Immediately after section 20(2) of the [Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984]^g insert the following subsections –

^g Orders en Conseil Vol. XXVIII, p. 353; Vol. XXXI, p. 278; Vol. XXXIII, p. 238; Vol. XXXIV, p. 458 and Vol. XLIII (1), p. 261; Recueil d'Ordonnances Tome XXVI, p. 177; Tome XXIX, p. 406 and Tome XXXIII, p. 472 and G.S.I. No. 43 of 2003.

" (3) Nothing in this section shall be taken to prohibit the Administrator or any person authorised by him in that behalf from disclosing to –

- (a) the electronic census supervisor, or
- (b) any census officer,

appointed under the Electronic Census (Guernsey) Ordinance, 2013, for the purposes of enabling them to discharge their functions under that Ordinance, information relating to the income of any person.

(4) Information disclosed to the electronic census supervisor or any census officer under subsection (3) may, without prejudice to the provisions of the Electronic Census (Guernsey) Ordinance, 2013 restricting or authorising the disclosure and use of information, be used by them for the purposes mentioned in subsection (3)."

NOTE

In section 18, and the marginal note thereto, the words in square brackets were substituted by the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 2013, section 1(2), First Schedule, paragraph 1, with effect from 1st May, 2014.

Citation.

19. This Ordinance may be cited as the Electronic Census (Guernsey) Ordinance, 2013.

Commencement.

20. This Ordinance shall come into force on the 30th October, 2013.

SCHEDULE

Section 5

FORM OF DECLARATION OR SECRECY TO BE MADE BY SUPERVISOR
AND CENSUS OFFICERS

Declaration of Secrecy

I, {name of supervisor or census officer}, solemnly declare that I will fully and honestly fulfil my duties as {supervisor/a census officer} in conformity with the requirements of the Electronic Census (Guernsey) Ordinance, 2013 and that I will not, except in the performance of my duties under that Ordinance, disclose or make known during my service as {supervisor/a census officer} or at any time thereafter, any matter which comes to my knowledge relating to any person, family, household or undertaking by reason of my service as {supervisor/a census officer}.

Signed: _____

Date: _____

¹ For subsequent amendments, see the consolidated text of the Income Tax (Guernsey) Law, 1975.