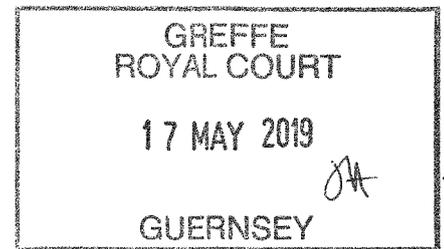


GUERNSEY STATUTORY INSTRUMENT

2019 No. **69**



**The Data Protection (General Provisions) (Bailiwick of
Guernsey) (Amendment) Regulations, 2019**

Made

Coming into operation

Laid before the States

13 *May*, 2019
25 *May*, 2019
, 2019

THE COMMITTEE FOR HOME AFFAIRS, in exercise of the powers conferred on it by sections 7(1), 37(1)(c), 40 and 109 of, and paragraph 17(a) of Schedule 2, paragraphs 1(2), 2 and 3(b) of Schedule 4, and paragraph 19 of Schedule 8 to, the Data Protection (Bailiwick of Guernsey) Law, 2017^a, sections 5(5) and 6(5)(b) of, and paragraph 7(a) of Schedule 2 to, the Data Protection (Law Enforcement and Related Matters) (Bailiwick of Guernsey) Ordinance, 2018^b, and all other powers enabling it in that behalf, following consultation with the Policy and Finance Committee of the States of Alderney, the Policy and Finance Committee of the Chief Pleas of Sark and the Data Protection Authority, hereby makes the following Regulations:-

Amendments to the 2018 Regulations.

1. The Data Protection (General Provisions) (Bailiwick of Guernsey) Regulations, 2018^c ("the principal Regulations") are amended as follows.

^a Order in Council No. VI of 2018; as amended by Ordinance No. X of 2018; Sark Ordinance No. VIII of 2018; G.S.I. No. 21 of 2018.

^b Ordinance No. XI of 2018; as amended by Order in Council No. IV of 2018; Sark Ordinance No. VIII of 2018.

^c G.S.I. No. 21 of 2018.

2. In regulation 2(2) of the principal Regulations –

- (a) at the end of subparagraph (a), delete "or",
- (b) at the end of subparagraph (b), for the full stop, substitute ", or", and
- (c) immediately after subparagraph (b), insert the following subparagraph –
 - "(c) any other controller or processor where –
 - (i) the registration is solely in respect of the processing of personal data in column 2 of Schedule 6, for the purpose in column 3 and subject to the conditions in column 4 of that schedule, and
 - (ii) the application is made before the 1st January, 2020."

3. In regulation 3 of the principal Regulations –

- (a) for paragraphs (1) and (2), substitute the following paragraph –

"(1) An application for registration as a controller or processor must include the following information –

- (a) the name, principal business address and contact details of the applicant,

- (b) if the applicant has nominated a representative for the purposes of the Law (for example, a controller's representative), the name, principal business address and contact details of the representative,
- (c) whether the applicant is a controller or processor (or both) in respect of the personal data being or to be processed,
- (d) the contact details of any data protection officer appointed in respect of the applicant, and
- (e) any other information that may be required by the Authority in connection with the application.", and

(b) omit paragraph (4).

4. In regulation 4 of the principal Regulations –

- (a) in the heading of this regulation, for "publish", substitute "maintain",
- (b) in paragraph (1) –
 - (i) at the end of subparagraph (a), for ", and", substitute a full stop, and
 - (ii) omit subparagraph (b).

5. In regulation 5 of the principal Regulations –

(a) in paragraph (1) –

(i) in subparagraph (a), for "published by the Authority", substitute "given to the Authority by and",

(ii) at the end of subparagraph (a), insert "and",

(iii) omit subparagraph (b), and

(iv) for subparagraph (c), substitute the following subparagraph –

"(c) the changes that need to be made to the register particulars mentioned in subparagraph (a) in order to make those particulars accurate or complete.",

(b) in paragraph (2)(b), for "or (as the case may be) the general description of security measures becomes", substitute "become", and

(c) omit paragraph (5).

6. In regulation 6(4) of the principal Regulations –

(a) at the end of subparagraph (a), delete "and",

(b) at the end of subparagraph (b), for the full stop, substitute ", and", and

(c) immediately after subparagraph (b), insert the following subparagraph –

"(c) any other registered controller or processor where –

(i) the registration is solely in respect of the processing of personal data in column 2 of Schedule 6, for the purpose in column 3 and subject to the conditions in column 4 of that schedule, and

(ii) the levy or penalty would otherwise be payable before the 1st January, 2020."

7. In regulation 11(2) of the principal Regulations –

(a) at the end of subparagraph (a), delete "and",

(b) in subparagraph (b) –

(i) immediately after "13,", insert "13A,", and

(ii) at the end of this subparagraph, for the full stop, substitute ", and", and

(c) immediately after subparagraph (b), insert the following subparagraph –

"(c) in respect of rows 13, 13A, 14, 15 and 16 of that table, is also for the purposes of section 6(5)(b) of the Law Enforcement Ordinance."

8. Immediately after regulation 11 of the principal Regulations, insert the following regulation –

"Special authorisation for processing certain personal data for purposes other than law enforcement.

11A. For the purposes of section 6(5)(b) of the Law Enforcement Ordinance, processing of personal data for any purpose other than a law enforcement purpose is authorised –

- (a) if the processing satisfies any condition in Schedule 2 to the Law Enforcement Ordinance (excluding the conditions in paragraphs 7(a) and 8 of that schedule),
or
- (b) for the avoidance of doubt, where the processing is authorised in accordance with regulation 11(1) and (2)(c)."

9. In regulation 17(2)(b) of the principal Regulations, for "25th May, 2019", substitute "1st January, 2020".

10. In regulation 18(1) of the principal Regulations, omit the definition of "additional contact details".

11. In Schedule 2 to the principal Regulations –

- (a) for "Regulation 11(1)" above the heading, substitute "Regulation 11",
- (b) for row 5 of the table in the schedule, substitute row 5 set out in Part I of the Schedule to these Regulations,

- (c) immediately after row 13 of that table, insert row 13A set out in Part II of the Schedule to these Regulations,
- (d) in each of rows 14, 15 and 16 of that table, for "Special category data", substitute "Any personal data", and
- (e) immediately after the definition of "**insurance business**", insert the following definition –

""**insurance contract**" means a contract of general insurance or long-term insurance,".

12. In Schedule 6 to the principal Regulations –

- (f) for "Regulation 17(1)" above the heading, substitute "Regulations 2(2)(c), 6(4)(c) and 17(1)", and
- (g) in the heading, immediately after "REGISTRATION", INSERT ", REGISTRATION FEE AND ANNUAL LEVY".

Citation.

13. These Regulations may be cited as the Data Protection (General Provisions) (Bailiwick of Guernsey) (Amendment) Regulations, 2019.

Commencement.

14. These Regulations come into force on the 25th May, 2019.

Dated this 13 day of May, 2019

A handwritten signature in cursive script that reads "Mary Lowe". The signature is fluid and includes a long horizontal flourish at the end.

Deputy Mary Lowe

President of the Committee for Home Affairs

For and on behalf of the Committee

SCHEDULE

Regulation 11(b) and (c)

ROWS TO BE INSERTED IN SCHEDULE 2 TO THE PRINCIPAL REGULATIONS

PART I

Row to replace row 5 in the table in Schedule 2 to the principal Regulations

"5.	Health data or criminal data	Any person carrying on insurance business, or acting for or on behalf of such a person	Enabling or facilitating the person to carry on insurance business	<p>The processing –</p> <p>(a) is necessary for a purpose relating to an objective that is in the public interest, and</p> <p>(b) where condition A applies, satisfies condition B.</p> <p>Condition A applies where–</p> <p>(a) the processing is not carried out for the purposes of measures or decisions with respect to the data subject, and</p> <p>(b) the data subject does not have and is not expected to acquire –</p> <p>(i) rights against, or obligations in relation to, an insured person under an insurance contract entered into by or on behalf of the controller, or</p> <p>(ii) any other rights or obligations in connection with such a contract.</p> <p>Condition B is satisfied if the controller -</p> <p>(a) cannot reasonably be expected to obtain the consent of the data subject,</p>
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				and (b) the controller is not aware of the data subject withholding consent."
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PART II

Row to be inserted immediately after row 13 in the table in Schedule 2 to the principal Regulations

"13A.	Any personal data	Any controller	Publication of a judgment or other decision of a court or tribunal	The processing – (a) consists of the publication of such a judgment or decision, or (b) enables or facilitates the publication of such a judgment or decision."
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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Data Protection (General Provisions) (Bailiwick of Guernsey) Regulations, 2018 ("**the principal Regulations**").

Regulation 2 of these Regulations amends regulation 2(2) of the principal Regulations (registration fees) to exempt an additional category of controllers and processors from the £50 registration fee. This additional category relates to a category of controllers and processors that, prior to the commencement of the Data Protection (Bailiwick of Guernsey) Law, 2017 on the 25th May, 2018, were **not** required to be notified (registered) ("**formerly exempt controllers and processors**"). This exemption applies only if the application for registration is made before the 1st January, 2020.

Regulation 3 of these Regulations amends regulation 3 of the principal Regulations

(other requirements for applications) to substantially reduce the types of information that need to be provided in an application for registration.

Regulation 4 of these Regulations amends regulation 4 of the principal Regulations (Authority to publish register particulars) to omit the requirement for the Data Protection Authority ("**the Authority**") to publish registration particulars in a public register.

Regulation 5 of these Regulations amends regulation 5 of the principal Regulations (registered controllers and processors to notify necessary changes) to reflect the reduced information requirements for an application for registration.

Regulation 6 of these Regulations amends regulation 6(4) of the principal Regulations (registered controllers and processors to pay annual levies) to exempt formerly exempt controllers and processors from any levy or penalty payable under regulation 6(1) of the principal Regulations, if the levy or penalty would otherwise be payable before the 1st January, 2020.

Regulation 7 of these Regulations amends regulation 11(2) of the principal Regulations (special authorisation for processing of personal data). These amendments reflect the insertion of new row 13A in the table in Schedule 2 to the principal Regulations (authorised processing of personal data) and provide that the authorisation to process personal data, in respect of rows 13A, 14, 15 and 16 of that table, extends to processing the personal data despite the prohibition against processing for a non-law enforcement purpose personal data collected for a law enforcement purpose (in section 6 of the Data Protection (Law Enforcement and Related Matters) (Bailiwick of Guernsey) Ordinance, 2018 ("**the LE Ordinance**").

Regulation 8 of these Regulations inserts new regulation 11A in the principal Regulations (special authorisation for processing certain personal data for purposes other than law enforcement). The new regulation 11A authorises the processing of

personal data where it satisfies any condition in Schedule 2 to the LE Ordinance (excluding the conditions in paragraphs 7(a) and 8, respectively, of that schedule), despite the prohibition against processing for a non-law enforcement purpose personal data collected for a law enforcement purpose in section 6 of the LE Ordinance.

Regulation 9 of these Regulations amends regulation 17(2)(b) of the principal Regulations (transitional exemptions from registration). This amendment delays the expiry of the transitional exemption from the duty to register given to formerly exempt controllers and processors. The previous expiry date was the 25th May, 2019, but this amendment replaces that date with the 1st January, 2020.

Regulation 10 of these Regulations amends regulation 18(1) of the principal Regulations (interpretation) to delete a definition that is no longer necessary as a consequence of the amendments made to regulation 3 of the principal Regulations.

Regulation 11 of these Regulations amends Schedule 2 to the principal Regulations (authorised processing of personal data). These amendments –

- replace the existing row 5 of the table in that schedule with a new row 5 that expands the authorisation for insurers to process health data or criminal data where necessary for a purpose that is in the public interest related to the carrying on of insurance business (with additional safeguards in relation to the personal data of individuals who do not have and are not expected to acquire rights or obligations under an insurance contract),
- insert a new row 13A in that table, that authorises controllers to process personal data where necessary for the publication of a judgment or other decision of a court or tribunal, and
- updates rows 14, 15 and 16 of that table to refer to the processing of any personal data (instead of only special category data), as these rows now authorise the processing for a non-law enforcement purpose of *any* personal

data collected for a law enforcement purpose (regardless whether or not that personal data is special category data).

Regulation 12 of these Regulations amends Schedule 6 to the principal Regulations (transitional exemptions from registration) as a consequence of the amendments made to regulations 2(2) (registration fees) and 6(4) (registered controllers and processors to pay annual levies) of the principal Regulations.

Regulations 13 and 14 of these Regulations are the citation and commencement provisions respectively.

These Regulations come into force on the 25th May, 2019.

