

GUERNSEY STATUTORY INSTRUMENT

ENTITLED

The Data Protection (Notification and Notification Fees) Regulations, 2002 *

[CONSOLIDATED TEXT]

NOTE

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* G.S.I. No. 24 of 2002; as amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the Data Protection (Notification and Notification Fees) (Amendment) Regulations, 2004 (G.S.I. No. 24 of 2002); the Data Protection (Notification and Notification Fees) (Amendment) Regulations, 2009 (G.S.I. No. 38 of 2009); the Data Protection (Notification and Notification Fees) (Amendment) Regulations, 2010 (G.S.I. No. 7 of 2010); the Data Protection (Notification and Notification Fees) (Amendment) Regulations, 2016 (G.S.I. No. 13 of 2016).

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The Data Protection (Notification and Notification Fees) Regulations, 2002

ARRANGEMENT OF REGULATIONS

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SCHEDULE Processing to which section 17(1) does not apply.

Explanatory Note.

(Made on 9th July, 2002.)

The Data Protection (Notification and Notification Fees) Regulations, 2002

WHEREAS the Data Protection Commissioner has submitted to the States Advisory and Finance Committee proposals in accordance with section 25(1) of the Data Protection (Bailiwick of Guernsey) Law, 2001^a:

AND WHEREAS the Committee has considered those proposals and has consulted the Data Protection Commissioner in accordance with sections 25(4) and 66(3)(b) of that Law:

AND WHEREAS it appears to the Committee that processing of a description set out in the Schedule to these Regulations is unlikely to prejudice the rights and freedoms of data subjects:

NOW THEREFORE the STATES ADVISORY AND FINANCE COMMITTEE, in exercise of the powers conferred on it by sections 17(3), 18(2)^b, (4) and (5), 19(2), (3), (4) and (5), 20(1), 26, and 66(2) of, and paragraph 2(7) and (8) of Schedule 11 to, that Law, hereby makes the following Regulations: –

Exemptions from notification.

1. Except where the processing is assessable processing for the purposes of section 22 of the Law, section 17(1) of the Law shall not apply in relation to processing –

- (a) falling within one or more of the descriptions of processing set out in paragraphs 2 to 5 of the Schedule to these Regulations (being processing appearing to [the Committee] to be unlikely to prejudice the rights and freedoms of data subjects), or

^a Order in Council No. V of 2002.

^b The powers in section 18(2) are extended by sections 18(3) and 20(3).

- (b) which does not fall within one or more of those descriptions solely by virtue of the fact that disclosure of the personal data to a person other than those specified in the descriptions –
 - (i) is required by or under any enactment, by any rule of law or by the order of a court, or
 - (ii) may be made by virtue of an exemption from the non-disclosure provisions (as defined in section 27(3) of the Law).

NOTES

In regulation 1, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.

The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of these Regulations were transferred to and vested in, respectively, the Committee for Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 6(a) and section 4, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.¹

Form of giving notification.

2. (1) Subject to regulations 3 and 4, the Commissioner shall determine the form in which the registrable particulars (within the meaning of section 16(1) of the Law) and the description mentioned in section 18(2)(b) of the Law are to be specified, including in particular the detail required for the purposes of that description and section 16(1)(c), (d), (e) and (f) of the Law.

(2) Subject to regulations 3 and 4 below, the Commissioner shall determine the form in which a notification under regulation 10 (including that regulation as modified by regulation 11) is to be specified.

Notification in respect of partnerships.

3. (1) In any case in which two or more persons carrying on a business in partnership are the data controllers in respect of any personal data for the purposes of that business, a notification under section 18 of the Law or under regulation 10 below may be given in respect of those persons in the name of the firm.

(2) Where a notification is given in the name of a firm under paragraph (1) above –

- (a) the name to be specified for the purposes of section 16(1)(a) of the Law is the name of the firm, and
- (b) the address to be specified for the purposes of section 16(1)(a) of the Law is the address of the firm's principal place of business.

Notification in respect of the proprietor of, and head teacher at, any school.

4. (1) In any case in which a proprietor of, and a head teacher at, any school are, in those capacities, the data controllers in respect of any personal data, a notification under section 18 of the Law or under regulation 10 below may be given in respect of that proprietor and head teacher in the name of the school.

(2) Where a notification is given in the name of a school under paragraph (1), the name and address to be specified for the purposes of section 16(1)(a) of the Law are those of the school.

(3) In this regulation, "**proprietor**" has the same meaning given in section 30(5) of the Law.

Fees to accompany notification under section 18 of the Law.

5. (1) This regulation applies to any notification under section 18 of the Law, including a notification which, by virtue of regulation 3 or 4 above, is given in respect of more than one data controller.

[(2) A notification to which this regulation applies must be accompanied by a fee of £50 except that no fee shall be payable in respect of a

notification –

- (a) made by an elected representative [or any person standing for election as an elected representative], where that notification is made for the purposes of lawfully carrying out functions as such a representative [or such a person], or
- (b) made by a body or association which is not established or conducted for profit.]

NOTES

In regulation 5,

paragraph (2) was substituted by the Data Protection (Notification and Notification Fees) (Amendment) Regulations, 2010, regulation 1(2), with effect from 1st March, 2010;²

the words in the first and second pairs of square brackets in subparagraph (a) of paragraph (2) were inserted by the Data Protection (Notification and Notification Fees) (Amendment) Regulations, 2016, regulation 1(a), with effect from 1st March, 2016.

Date of entry in the register.

6. (1) The time from which an entry in respect of a data controller who has given a notification under section 18 of the Law in accordance with these Regulations is to be treated for the purposes of section 17 of the Law as having been made in the register shall be determined as follows.

(2) In the case of a data controller who has given the notification by sending it by registered post or the recorded delivery service, that time is the day after the day on which it is received for dispatch by the Post Office.

(3) In the case of a data controller who has given a notification by some other means, that time is the day on which it is received by the Commissioner.

Acknowledgment of receipt of notification in the case of assessable processing.

7. (1) In any case in which the Commissioner considers under section 22(2)(a) of the Law that any of the processing to which a notification relates is assessable processing within the meaning of that section he shall, within 10 days of receipt of the notification, give a written notice to the data controller who has given the notification, acknowledging its receipt.

- (2) A notice under paragraph (1) above shall indicate –
- (a) the date on which the Commissioner received the notification, and
 - (b) the processing which the Commissioner considers to be assessable processing.

Confirmation of register entries.

8. (1) The Commissioner shall, as soon as practicable and in any event within a period of 28 days after making an entry in the register under section 19(1)(b) of the Law or amending an entry in the register under section 20(4) of the Law, give the data controller to whom the register entry relates notice confirming the register entry.

- (2) A notice under paragraph (1) shall include a statement of –
- (a) the date on which –
 - (i) in the case of an entry made under section 19(1)(b) of the Law, the entry is treated as having been included by virtue of regulation 6, or
 - (ii) in the case of an entry made under section 20(4) of the Law, the notification was received by the Commissioner,
 - (b) the particulars entered in the register, or the amendment made, in pursuance of the notification, and

- (c) in the case of a notification under section 18 of the Law, the date by which the fee payable under regulation 12 must be paid in order for the entry to be retained in the register as provided by section 19(4) of the Law.

Additional information in register entries.

9. In addition to the matters mentioned in section 19(2)(a) of the Law, the Commissioner may include in a register entry –

- (a) a registration number issued by the Commissioner in respect of that entry,
- (b) the date on which the entry is treated, by virtue of regulation 6, as having been included in pursuance of a notification under section 18 of the Law,
- (c) the date on which the entry falls or may fall to be removed by virtue of regulation 12 or 13; and
- (d) information additional to the registrable particulars for the purpose of assisting persons consulting the register to communicate with any data controller to whom the entry relates concerning matters relating to the processing of personal data.

Duty to notify changes to matters previously notified.

10. (1) Subject to regulation 11, every person in respect of whom an entry is for the time being included in the register is under a duty to give the Commissioner a notification specifying any respect in which –

- (a) that entry becomes inaccurate or incomplete as a statement of his current registrable particulars, or

- (b) the general description of measures notified under section 18(2)(b) of the Law or, as the case may be, that description as amended in pursuance of a notification under this regulation, becomes inaccurate or incomplete,

and setting out the changes which need to be made to that entry or general description in order to make it accurate and complete.

(2) Such a notification must be given as soon as practicable and in any event within a period of 28 days from the date on which the entry or, as the case may be, the general description, becomes inaccurate or incomplete.

(3) References in this regulation to an entry being included in the register include any entry being treated under regulation 6 as being so included.

Duty to notify changes - transitional modifications.

11. (1) This regulation applies to persons in respect of whom an entry in the register has been made under paragraph 2(6) of Schedule 11 to the Law.

(2) In the case of a person to whom this regulation applies, the duty imposed by regulation 10 shall be modified so as to have effect as follows.

(3) Every person in respect of whom an entry is for the time being included in the register is under a duty to give the Commissioner a notification specifying –

- (a) his name and address, in any case in which a change to his name or address results in the entry in respect of him no longer including his current name and address,
- (b) to the extent to which the entry relates to eligible data –
 - (i) a description of any eligible data being or to be processed by him or on his behalf, in any case

in which such processing is of personal data of a description not included in that entry,

- (ii) a description of the category or categories of data subject to which eligible data relate, in any case in which such category or categories are of a description not included in that entry,
- (iii) a description of the purpose or purposes for which eligible data are being or are to be processed in any case in which such processing is for a purpose or purposes of a description not included in that entry,
- (iv) a description of the source or sources from which he intends or may wish to obtain eligible data, in any case in which such obtaining is from a source of a description not included in that entry,
- (v) a description of any recipient or recipients to whom he intends or may wish to disclose eligible data, in any case in which such disclosure is to a recipient or recipients of a description not included in that entry, and
- (vi) the names, or a description of, any countries or territories outside the Bailiwick to which he directly or indirectly transfers, or intends or may wish directly or indirectly to transfer, eligible data, in any case in which such transfer would be to a country or territory not named or described in that entry, and

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- (c) to the extent to which sub-paragraph (b) above does not apply, any respect in which the entry is or becomes inaccurate or incomplete as –
 - (i) a statement of his current registrable particulars to the extent mentioned in section 16(1)(c), (d) and (e) of the Law,
 - (ii) a description of the source or sources from which he currently intends or may wish to obtain personal data, and
 - (iii) the names or a description of any countries or territories outside the Bailiwick to which he currently intends or may wish directly or indirectly to transfer personal data,

and setting out the changes which need to be made to that entry in order to make it accurate and complete in those respects.

(4) Such a notification must be given as soon as practicable and in any event within a period of 28 days from the date on which –

- (a) in the case of a notification under paragraph (3)(a), the entry no longer includes the current name and address,
- (b) in the case of a notification under paragraph (3)(b), the specified practice or intentions are in the particulars there mentioned of a description not included in the entry, and
- (c) in the case of a notification under paragraph (3)(c), the entry becomes inaccurate or incomplete in the particulars there mentioned.

(5) For the purposes of this regulation, personal data are "eligible

data" at any time if, and to the extent that, they are at that time subject to processing which was already under way immediately before the coming into operation of these Regulations.

Retention of register entries.

12. (1) This regulation applies to any entry in respect of a person which is for the time being included, or by virtue of regulation 6 is treated as being included, in the register, other than an entry to which regulation 13 applies.

[(2) In relation to an entry to which this regulation applies, the fee referred to in section 19(4) of the Law is £50 except that no fee shall be payable in respect of the retention of an entry made in respect of a notification –

- (a) made by an elected representative [or any person standing for election as an elected representative], where that notification was made for the purposes of lawfully carrying out functions as such a representative [or such a person], or
- (b) made by a body or association which is not established or conducted for profit.]

NOTES

In regulation 12,

paragraph (2) was substituted by the Data Protection (Notification and Notification Fees) (Amendment) Regulations, 2010, regulation 1(3), with effect from 1st March, 2010;

the words in the first and second pairs of square brackets in subparagraph (a) of paragraph (2) were inserted by the Data Protection (Notification and Notification Fees) (Amendment) Regulations, 2016, regulation 1(b), with effect from 1st March, 2016.

Retention of register entries - transitional provisions.

13. (1) This regulation applies to any entry in respect of a person which is for the time being included in the register under paragraph 2(6) of Schedule 11 to the Law or, as the case may be, such an entry as amended in

pursuance of regulation 10 (including that regulation as modified by regulation 11).

(2) Section 19(4) and (5) of the Law applies to entries to which this regulation applies subject to the modifications in paragraph (3).

(3) Section 19(4) and (5) of the Law shall be modified so as to have effect as follows –

- " (4) No entry shall be retained in the register after –
- (a) the end of the registration period,
 - (b) the expiry of the first transitional period, or
 - (c) the date on which the data controller gives a notification under section 18 of the Law,

whichever occurs first.

(5) In subsection (4) "**the registration period**" has the same meaning as in paragraph 2(2) of Schedule 11."

Interpretation.

14. (1) In these Regulations, unless the context otherwise requires –

["**elected representative**" means –

- (a) a member of the States of Deliberation of Guernsey^{ba},
- (b) a holder in Guernsey of the office of –
 - (i) Constable,

^{ba} As to membership of the States of Deliberation of Guernsey, see Article 1 of the Reform (Guernsey) Law, 1948, as amended by section 1 of the Reform (Replacement of Conseillers (Guernsey) Law, 1998 and the Reform (Guernsey) (Amendment) Law, 2003.

- (ii) Douzenier^{bb},
- (iii) Procureur of the Poor, or
- (iv) Overseer of the Poor^{bc},
- (c) a member of the States of Alderney^{bd}, [...]
- (d) a member of the Chief Pleas of Sark^{be}, [or
- (e) a holder in Sark or the office of –
 - (i) Constable,
 - (ii) Vingtenier,
 - (iii) Assistant Constable,
 - (iv) Procureur of the Poor, or
 - (v) Deputy Procureur of the Poor.]]

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

"Post Office" includes the holder of a licence granted under section 2

^{bb} Election to the offices of Constable and Douzenier is governed by Part V of the Reform (Guernsey) Law, 1948, as amended.

^{bc} Election to the offices of Procureur of the Poor and Overseer of the Poor is provided for under Article XVII of the Public Assistance Law, 1937, as amended.

^{bd} As to membership of the States of Alderney, see section 27 of the Government of Alderney Law, 1987, as amended by the Government of Alderney (Amendment) Law, 1998.

^{be} As to the composition of the Chief Pleas of Sark, see section 1 of the Reform (Sark) Law, 1951.

of the Post Office (Bailiwick of Guernsey) Law, 2001^c, and

"the register" means the register maintained by the Commissioner under section 19 of the Law.

(2) The provisions of the Interpretation (Guernsey) Law, 1948^d apply to the interpretation of these Regulations –

(a) throughout the Bailiwick, and

(b) as they apply to the interpretation of an enactment.

(3) Unless the context otherwise requires, references in these Regulations to an enactment are references thereto as amended, re-enacted (with or without modification), extended or applied.

(4) Unless the context otherwise requires –

(a) a reference in these Regulations to a numbered regulation is a reference to the regulation of these Regulations which is so numbered, and

(b) a reference in a provision of these Regulations to a numbered paragraph is a reference to the paragraph of that provision which is so numbered.

NOTES

In regulation 14,

the definition of the expression "elected representative" in paragraph (1) was inserted by the Data Protection (Notification and Notification Fees) (Amendment) Regulations, 2004, regulation 1(b), with effect from 1st January, 2005;

^c Orders in Council No. XV of 2001.

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

the words omitted in the first pair of square brackets within the definition of the expression "elected representative" in paragraph (1) were repealed, and the words in the second pair of square brackets therein were inserted, by the Data Protection (Notification and Notification Fees) (Amendment) Regulations, 2009, respectively regulation 1(a) and regulation 1(b), with effect from 14th July, 2009.

Citation.

15. These Regulations may be cited as the Data Protection (Notification and Notification Fees) Regulations, 2002.

Commencement.

16. These Regulations shall come into force on the 1st August, 2002.

SCHEDULE Regulation 1
PROCESSING TO WHICH SECTION 17(1) DOES NOT APPLY

Interpretation.

1. In this Schedule –

"**exempt purposes**" in paragraphs 2 to 4 shall mean the purposes specified in sub-paragraph (a) of those paragraphs and in paragraph 5 shall mean the purposes specified in sub-paragraph (b) of that paragraph,

"**staff**" includes employees, office holders, workers, persons working under any contract for services and volunteers.

Staff administration exemption.

2. The processing –

- (a) is for the purposes of appointments or removals, pay, discipline, superannuation, work management or other personnel matters in relation to the staff of the data controller,
- (b) is of personal data in respect of which the data subject is –
 - (i) a past, existing or prospective member of staff of the data controller, or
 - (ii) any person the processing of whose personal data is necessary for the exempt purposes,
- (c) is of personal data consisting of the name, address and other identifiers of the data subject or information as to –
 - (i) qualifications, work experience or pay, or

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- (ii) other matters the processing of which is necessary for the exempt purposes,
- (d) does not involve disclosure of the personal data to any third party other than –
 - (i) with the consent of the data subject, or
 - (ii) where it is necessary to make such disclosure for the exempt purposes, and
- (e) does not involve keeping the personal data after the relationship between the data controller and staff member ends, unless and for so long as it is necessary to do so for the exempt purposes.

Advertising, marketing and public relations exemption.

3. The processing –

- (a) is for the purposes of advertising or marketing the data controller's business, activity, goods or services and promoting public relations in connection with that business or activity, or those goods or services,
- (b) is of personal data in respect of which the data subject is –
 - (i) a past, existing or prospective customer or supplier, or
 - (ii) any person the processing of whose personal data is necessary for the exempt purposes,
- (c) is of personal data consisting of the name, address and other identifiers of the data subject or information as

to other matters the processing of which is necessary for the exempt purposes,

- (d) does not involve disclosure of the personal data to any third party other than –
 - (i) with the consent of the data subject, or
 - (ii) where it is necessary to make such disclosure for the exempt purposes, and
- (e) does not involve keeping the personal data after the relationship between the data controller and customer or supplier ends, unless and for so long as it is necessary to do so for the exempt purposes.

Accounts and records exemption.

4. (1) The processing –

- (a) is for the purposes of keeping accounts relating to any business or other activity carried on by the data controller, or deciding whether to accept any person as a customer or supplier, or keeping records of purchases, sales or other transactions for the purpose of ensuring that the requisite payments and deliveries are made or services provided by or to the data controller in respect of those transactions, or for the purpose of making financial or management forecasts to assist him in the conduct of any such business or activity,
- (b) is of personal data in respect of which the data subject is –
 - (i) past, existing or prospective customer or supplier, or

- (ii) any person the processing of whose personal data is necessary for the exempt purposes,
- (c) is of personal data consisting of the name, address and other identifiers of the data subject or information as to –
 - (i) financial standing, or
 - (ii) other matters the processing of which is necessary for the exempt purposes,
- (d) does not involve disclosure of the personal data to any third party other than –
 - (i) with the consent of the data subject, or
 - (ii) where it is necessary to make such disclosure for the exempt purposes, and
- (e) does not involve keeping the personal data after the relationship between the data controller and customer or supplier ends, unless and for so long as it is necessary to do so for the exempt purposes.

(2) Sub-paragraph (1)(c) shall not be taken as including personal data processed by or obtained from a credit reference agency.

Non profit-making organisations exemptions.

5. The processing –

- (a) is carried out by a data controller which is a body or association which is not established or conducted for profit,

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- (b) is for the purposes of establishing or maintaining membership of or support for the body or association, or providing or administering activities for individuals who are either members of the body or association or have regular contact with it,
- (c) is of personal data in respect of which the data subject is –
 - (i) a past, existing or prospective member of the body or [association],
 - (ii) any person who has regular contact with the body or [association] in connection with the exempt purposes, or
 - (iii) any person the processing of whose personal data is necessary for the exempt purposes,
- (d) is of personal data consisting of the name, address and other identifiers of the data subject or information as to –
 - (i) eligibility for membership of the body or association, or
 - (ii) other matters the processing of which is necessary for the exempt purposes,
- (e) does not involve disclosure of the personal data to any third party other than –
 - (i) with the consent of the data subject, or
 - (ii) where it is necessary to make such disclosure for the exempt purposes, and

- (f) does not involve keeping the personal data after the relationship between the data controller and data subject ends, unless and for so long as it is necessary to do so for the exempt purposes.

NOTE

In the Schedule, the words in square brackets in paragraph 5 were substituted by the Data Protection (Notification and Notification Fees) (Amendment) Regulations, 2010, regulation 1(4), with effect from 1st March, 2010.

¹ The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of these Regulations were previously transferred to them from the Advisory and Finance Committee and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 1(d), Schedule 2, paragraph 1(d), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

² Prior to its substitution, subsection (2) was amended by the Data Protection (Notification and Notification Fees) (Amendment) Regulations, 2004, regulation 1(a), with effect from 1st January, 2005.