



The Data Protection (General Provisions) (Bailiwick of Guernsey) (Amendment No. 2) Regulations, 2020

<i>Made</i>	14 th September, 2020
<i>Coming into operation</i>	1 st October, 2020
<i>Laid before the States</i>	, 2020

THE COMMITTEE FOR HOME AFFAIRS, in exercise of the powers conferred on it by sections 37(1), 39, 40, and 109 of, and paragraphs 1(2) and 2 of Schedule 4 to, the Data Protection (Bailiwick of Guernsey) Law, 2017^a and all other powers enabling it in that behalf, following consultation with the Data Protection Authority, the Policy and Finance Committee of the States of Alderney and the Policy & Finance Committee of the Chief Pleas of Sark, hereby makes the following Regulations:-

Amendments to the 2018 Regulations.

1. The Data Protection (General Provisions) (Bailiwick of Guernsey) Regulations, 2018^b ("the principal Regulations") are amended as follows.
2. Immediately after the heading of Part I of the principal Regulations, insert the following regulations –

^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 G.S.I. No. 21 of 2018; as amended by G.S.I. Nos. 69 and 115 of 2019; No. 2 of 2020.

"Interpretation of Parts I and II.

A1. In this Part, Part II and Schedules 1, 1A, 1B, 1C and 1D –

"administered entity", in relation to any levy collection agent ("A"), means a person for whom A is a levy collection agent within the meaning of regulation D1,

"Alderney public entity" has the meaning given by Schedule 1A,

"certificate of exemption" means a certificate given to an administered entity under regulation 6A,

"company" means –

- (a) a company within the meaning of sections 1 and 2 of the Companies (Guernsey) Law, 2008,
- (b) a company the memorandum and articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994, or
- (c) an external company registered in the Register of External Companies under section 3 of the Companies (Alderney) Law (External Companies) Ordinance, 1998,

"exempt person" – see regulation C1,

"foundation" means a foundation created under the Foundations (Guernsey) Law, 2012,

"full-time equivalent employees" are to be calculated in accordance with Schedule 1D,

"Guernsey public entity" has the meaning given by Schedule 1B,

"large organisation" means a person that employs 50 or more full-time equivalent employees,

"levy collection agent" – see regulation D1,

"limited liability partnership" means a limited liability partnership incorporated under the Limited Liability Partnerships (Guernsey) Law, 2013,

"limited partnership" means a limited partnership in respect of which there is a valid certificate of registration under the Limited Partnerships (Guernsey) Law, 1995,

"Registry number", in relation to any company, foundation or limited liability partnership, means the number allocated to the company, foundation or (as the case may be) limited liability partnership by the Registrar of Companies, the Registrar (under the Companies (Alderney) Law, 1994), the Registrar of Foundations or (as the case may be) the Registrar of Limited Liability Partnerships,

"return date", in relation to any return year, means midnight of the 31st December last preceding the return year,

"return year", in relation to any levy collection agent required to make a return under regulation 5A, means the calendar year in which the levy collection agent is required to make the return, and

"Sark public entity" has the meaning given by Schedule 1C.

Exemptions from registration.

B1. The following are exempt from the requirement to register as a

controller or processor under section 39(1) of the Law –

- (a) an exempt person, and
- (b) a controller or (as the case may be) processor that only causes or permits personal data to be processed in circumstances where the processing –
 - (i) is occasional,
 - (ii) does not include any large-scale or systematic processing, and
 - (iii) is not high-risk processing.

Meaning of "exempt person".

C1. (1) A person is an exempt person at any time ("the exemption date") if the person –

- (a) is a relevant entity, and
 - (b) satisfies condition A or B.
- (2) Condition A is that the person –
- (a) is a company incorporated or registered under the Companies (Guernsey) Law, 2008,
 - (b) is a company the memorandum and articles of which were registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994,

- (c) is an external company registered in the Register of External Companies under section 3 of the Companies (Alderney) Law (External Companies) Ordinance, 1998,
- (d) is a foundation registered under the Foundations (Guernsey) Law, 2012,
- (e) is a limited liability partnership registered under the Limited Liability Partnerships (Guernsey) Law, 2013, or
- (f) is a limited partnership registered under the Limited Partnerships (Guernsey) Law, 1995,

and the incorporation or (as the case may be) registration took place in the calendar year last preceding the exemption date.

(3) Condition B is that –

- (a) at midnight of the 31st December last preceding the exemption date, there was a levy collection agent (within the meaning of regulation D1) for the person, and
- (b) either –
 - (i) that person authorised a levy collection agent for the very first time in the calendar year in which that 31st December occurred and the exemption date falls on or before the 31st March of the following calendar year, or

- (ii) that person holds a valid certificate of exemption as at the exemption date.

(4) For the purposes of paragraph (1)(a), a person is a relevant entity if the person –

- (a) is a company, a foundation, a limited liability partnership or a limited partnership,
- (b) is not a large organisation,
- (c) is not a non profit organisation,
- (d) is not required under the Law to designate a data protection officer, and
- (e) is not a levy collection agent for any other person.

Meaning of "levy collection agent".

D1. (1) A person ("A") is a levy collection agent for any other person ("B") if –

- (a) A is –
 - (i) a licensed fiduciary holding a full fiduciary licence, where "licensed fiduciary" and "full fiduciary licence" have the respective meanings given by section 58(1) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey)

Law, 2000,

- (ii) a licensed institution within the meaning of section 56(1) of the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
 - (iii) a licensed insurer within the meaning of Schedule 5 to the Insurance Business (Bailiwick of Guernsey) Law, 2002,
 - (iv) a licensed insurance intermediary or licensed insurance manager within the meaning of Schedule 3 to the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
 - (v) a person carrying on a financial services business registered under the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, or
 - (vi) a person licensed to carry on a controlled investment business under the Protection of Investors (Bailiwick of Guernsey) Law, 1987,
- (b) B has authorised A in writing to act as a levy collection agent for B for the purposes of these Regulations and the authorisation is in effect, and
- (c) A has agreed to act as a levy collection agent for B and the agreement is in effect."

3. In regulation 2 of the principal Regulations –

(a) for paragraph (1), substitute the following paragraph –

"(1) The fee payable in respect of an application for registration is the registration fee specified in column 2 of Schedule 1 in relation to the controller or processor described in column 1 of that schedule.", and

(b) revoke paragraphs (2) and (4).

4. In regulation 3 of the principal Regulations, for paragraph (1), substitute the following paragraph –

"(1) A person applying for registration as a controller or processor must include the following information in the application –

- (a) the name, principal business address and contact details of the person,
- (b) whether the person is a controller, processor, or both in respect of the personal data being or to be processed,
- (c) if the person has designated a representative for that person in the Bailiwick under section 38 of the Law, the name, principal business address and contact details of the representative,
- (d) if the person has a data protection officer, the name, principal business address and contact details of the data protection officer,

- (e) if the person is a company, foundation or limited liability partnership, the Registry number allocated to that person,
- (f) whether the person has agreed to act as a levy collection agent for another person, and if so, any reference number allocated or assigned to the person (the levy collection agent) by the Guernsey Financial Services Commission, and
- (g) whether or not the person employs 50 or more full-time equivalent employees."

5. In regulation 4(2) of the principal Regulations –

- (a) in subparagraph (a), immediately after "3(1)", insert "or in a return made under regulation 5A or 5B", and
- (b) in subparagraph (b), delete "in a notification, or".

6. Immediately after regulation 5 of the principal Regulations, insert the following regulations –

"Levy collection agents to make annual returns.

5A. (1) In 2021 and each subsequent calendar year, a levy collection agent registered as a controller or processor must give the Authority an annual return in accordance with paragraph (2) –

- (a) including the information specified in regulation 3(1)(a) to (f) (inclusive of both paragraphs),
- (b) specifying whether or not the levy collection agent

employed 50 or more full-time equivalent employees as at the return date, and

- (c) specifying the number of persons for which the levy collection agent acted as a levy collection agent as at the return date.

(2) The annual return must be given to the Authority –

- (a) on or before the last day of February of each year, and
- (b) in a form and manner specified by the Authority.

(3) Nothing in this regulation requires a levy collection agent that registers itself as a controller or processor on or after the 1st January and before the last day of February in any calendar year to give the Authority an annual return in that calendar year.

Other controllers and processors to make returns in 2021.

5B. (1) A person, other than a levy collection agent, registered as a controller or processor before the 1st January, 2021 must give the Authority a return in 2021 in accordance with paragraph (2) –

- (a) including the information specified in regulation 3(1)(a) to (e) (inclusive of both paragraphs), and
- (b) specifying whether or not the person employed 50 or more full-time equivalent employees as at the return date.

(2) The return must be given to the Authority –

(a) on or before the last day of February 2021, and

(b) in a form and manner specified by the Authority."

7. In regulation 6 of the principal Regulations –

(a) in paragraph (1), for "-" and subparagraphs (a) and (b), substitute ", the annual levy specified in column 3 of Schedule 1 in relation to the controller or processor described in column 1 of that schedule.",

(b) in paragraph (2), for the words beginning "on or before" until the end of the paragraph, substitute "within the time specified for payment of that levy in column 4 of that schedule.", and

(c) revoke paragraphs (3), (4) and (6).

8. Immediately after regulation 6 of the principal Regulations, insert the following regulations –

"Levy collection agents to give administered entities a certificate of exemption.

6A. (1) Upon paying an annual levy under regulation 6, a levy collection agent must give each administered entity (in respect of which the levy collection agent paid the administered entities levy as part of the annual levy) a certificate of exemption in a form specified by the Authority –

(a) as soon as practicable, and

(b) in any event within one month of paying the annual levy.

(2) A certificate of exemption is valid until midnight of the 31st

March in the calendar year immediately following the year in which that annual levy was paid.

Levy collection agents to keep records of administered entities.

6B. (1) A levy collection agent registered as a controller or processor must keep records of the following in accordance with paragraph (2) –

- (a) the name and, in the case of a company, foundation or limited liability partnership, the Registry number, of each administered entity as at each return date,
- (b) a copy of the certificate of exemption that the levy collection agent gave to the administered entity under regulation 6A, and
- (c) the date on which the levy collection agent sent the certificate of exemption to the administered entity.

(2) The levy collection agent must keep those records for a period of six years from the return date."

9. In regulation 18(1) of the principal Regulations, insert in the appropriate alphabetical order the following definition –

""**contact details**" means email address and telephone number,".

10. For Schedule 1 to the principal Regulations, substitute the schedules in the Schedule to these Regulations.

Transitional.

11. From the 1st October 2020 to the 31st December, 2020, inclusive of both

dates, Schedule 1 to the principal Regulations has effect as if both the amount and total amount payable as the registration fee or the annual levy are nil.

Citation.

12. These Regulations may be cited as the Data Protection (General Provisions) (Bailiwick of Guernsey) (Amendment No. 2) Regulations, 2020.

Commencement.

13. (1) Subject to paragraph (2), these Regulations come into force on the 1st January, 2021.

(2) Regulation 11 comes into force on the 1st October, 2020.

Dated this 14th day of September, 2020



Deputy Mary Lowe

President of the Committee for Home Affairs

For and on behalf of the Committee

SCHEDULE

Regulation 10

SCHEDULES TO SUBSTITUTE
FOR
SCHEDULE 1 IN THE PRINCIPAL REGULATIONS

"SCHEDULE 1

Regulations 2(1) and 6(1)

REGISTRATION FEES AND ANNUAL LEVIES

Column 1: Controller or processor	Column 2: Registration fee	Column 3: Annual levy	Column 4: When annual levy must be paid
The Policy & Resources Committee of the States of Guernsey	£300, 000	£300, 000	On or after the 1 st January and no later than the last day of February, in 2021 and each subsequent calendar year
A Guernsey public entity other than the Policy & Resources Committee of the States of Guernsey	Nil	Nil	N/A
The Policy and Finance Committee of the States of Alderney	£2,000	£2,000	On or after the 1 st January and no later than the last day of February, in 2021 and each subsequent calendar year

Column 1: Controller or processor	Column 2: Registration fee	Column 3: Annual levy	Column 4: When annual levy must be paid
An Alderney public entity other than the Policy and Finance Committee of the States of Alderney	Nil	Nil	N/A
The Policy and Performance Committee of the Chief Pleas of Sark	£2,000	£2,000	On or after the 1 st January and no later than the last day of February, in 2021 and each subsequent calendar year
A Sark public entity other than the Policy & Finance Committee of the Chief Pleas of Sark	Nil	Nil	N/A
An elected representative, in respect of processing for the purposes of carrying out any function or activity as an elected representative	Nil	Nil	N/A
A body or association that is a	Nil	Nil	N/A

Column 1: Controller or processor	Column 2: Registration fee	Column 3: Annual levy	Column 4: When annual levy must be paid
non profit organisation			
A levy collection agent	The aggregate of (a) and (b): (a) £2, 000 for a large organisation and £50 otherwise, and (b) the administered entities charge	The aggregate of (a) and (b): (a) £2, 000 for a large organisation and £50 otherwise, and (b) the administered entities charge	On or after the 1 st January and no later than the last day of February, in 2021 and each subsequent return year
Any other person	£2, 000 for a large organisation and £50 otherwise	£2, 000 for a large organisation and £50 otherwise	On or after the 1 st January and no later than the last day of February, in 2021 and each subsequent calendar year

In this Schedule –

the "administered entities charge", in relation to the registration fee or annual levy payable by any person that is a collection agent, is £50 in respect of each

administered entity for which the person was the levy collection agent as at midnight of the 31st December last preceding the year in which the registration fee or (as the case may be) annual levy is payable,

"**elected representative**" is deemed to include any person standing for election as an elected representative, and

whether or not a person is a large organisation is to be assessed and calculated –

- (a) in the case of a registration fee, at the time the person applies for registration, and
- (b) in the case of an annual levy, as at midnight of the 31st December last preceding the year in which the annual levy is payable.

SCHEDULE 1A

Regulation A1

ALDERNEY PUBLIC ENTITIES

Each of the following is an Alderney public entity –

- (a) the States of Alderney,
- (b) any authority, board, committee or council of the States of Alderney (however named) constituted by or under a Resolution, a Law or an Ordinance approved by the States of Alderney,
- (c) any holder of a public office remunerated out of funds provided by the States of Alderney or a body described in paragraph (b),
- (d) any body of persons, whether incorporated or not –
 - (i) constituted under any enactment or customary law in force in Alderney, or
 - (ii) funded wholly or mainly out of funds provided by the States of Alderney or a body described in paragraph (b),
- (e) a court or tribunal of Alderney duly constituted under any enactment or customary law in force in Alderney,
- (f) any person hearing or determining an appeal, or conducting a public inquiry, under any enactment or customary law in force in Alderney,
- (g) an officer of police, within the meaning given by Part I of the Schedule to the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016,

- (h) the Alderney Fire and Ambulance Service (however named), and
- (i) any officers of the States of Guernsey (or States of Alderney) carrying out or otherwise providing services on or in respect of Alderney that are provided by the States of Guernsey.

SCHEDULE 1B

Regulation A1

GUERNSEY PUBLIC ENTITIES

Each of the following is a Guernsey public entity –

- (a) the States of Guernsey or States of Deliberation,
- (b) any authority, board, committee or council of the States of Guernsey (however named) constituted by or under a Resolution, a Law or an Ordinance approved by the States of Deliberation,
- (c) any holder of a public office remunerated out of funds provided by the States of Guernsey or a body described in paragraph (b),
- (d) any body of persons, whether incorporated or not –
 - (i) constituted under any enactment or customary law in force in Guernsey, or
 - (ii) funded wholly or mainly out of funds provided by the Chief Pleas or a body described in paragraph (b),
- (e) a court or tribunal of Guernsey or the Bailiwick of Guernsey duly constituted under any enactment or customary law in force in Guernsey,
- (f) any person hearing or determining an appeal, or conducting a public inquiry, under any enactment or customary law in force in Guernsey,
- (g) the salaried police force of the Island of Guernsey, and
- (h) a parish Douzaine of the Island of Guernsey.

SCHEDULE 1C

Regulation A1

SARK PUBLIC ENTITIES

Each of the following is a Sark public entity –

- (a) the Chief Pleas,
- (b) any authority, board, committee or council of the Chief Pleas (however named) constituted by or under a Resolution, a Law or an Ordinance approved by the Chief Pleas,
- (c) any holder of a public office remunerated out of funds provided by the Chief Pleas or a body described in paragraph (b),
- (d) any body of persons, whether incorporated or not –
 - (i) constituted under any enactment or customary law in force in Sark, or
 - (ii) funded wholly or mainly out of funds provided by the Chief Pleas or a body described in paragraph (b),
- (e) a court or tribunal of Sark duly constituted under any enactment or customary law in force in Sark,
- (f) any person hearing or determining an appeal, or conducting a public inquiry, under any enactment or customary law in force in Sark,
- (g) an officer of police, within the meaning given by Part I of the Schedule to the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016,

- (h) the Douzaine of Sark, and

- (i) the Sark doctor, within the meaning given by section 47(1) of the Regulation of Health Professions (Medical Practitioners) (Sark) Ordinance, 2017.

SCHEDULE 1D

Regulation A1

CALCULATION OF NUMBER OF FULL-TIME EQUIVALENT EMPLOYEES

1. For the purposes of calculating the number of full-time equivalent employees of any person ("**the employer**") –

"**employee**" means an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of service for the employer, whether express or implied and whether written or oral, and

"**full time employee**" means –

- (a) an employee who works or who under his contract of service is required to work for the employer 27 hours or more per week,
or
 - (b) a number of employees who do not individually fall within subparagraph (a) but who collectively work or who collectively under their contracts of service are required to work for the employer, 27 hours or more per week in the aggregate.
2. An individual who works or who under his contract of service is required to work for an employer is to be regarded as an employee of the employer whether the contract of service the individual has entered into or works under was made with the employer or, where the employer is a company, with an associated company of the employer.
3. For the avoidance of doubt –
 - (a) the hours worked by an employee includes any hours worked wholly

or mainly outside the Bailiwick of Guernsey,

- (b) a director of the employer in his capacity as director is not to be regarded as a full time employee of that employer unless the director is, in that capacity, an employee within the meaning of paragraph 1 of this schedule.

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**").

These Regulations amend the principal Regulations to provide for certain registered controllers and processors to effectively act as levy collection agents for entities ("**relevant entities**") that are potentially eligible to be exempt from registration under the Data Protection (Bailiwick of Guernsey) Law, 2017 ("**the Law**").

A company, foundation, limited liability partnership or limited partnership qualifies as a relevant entity, unless it is a large organisation (50 or more full-time equivalent employees), a non profit organisation, a levy collection agent or is required to designate a data protection officer under the Law.

Any of these persons may act as a levy collection agent for relevant entities where duly authorised by those entities: a full fiduciary licensee under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000; a licensed institution under the Banking Supervision (Bailiwick of Guernsey) Law, 1994; a licensed insurer under the Insurance Business (Bailiwick of Guernsey) Law, 2002; a licensed insurance intermediary or licensed insurance manager under the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002; a person carrying on a financial services business registered under the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008; or a person licensed to carry on a controlled investment business under the Protection of Investors (Bailiwick of Guernsey) Law, 1987.

These Regulations amend the principal Regulations to require levy collection agents to give the Data Protection Authority annual returns, and exempt from registration relevant entities that have authorised these levy collection agents to act as such

agents. Levy collection agents will have to pay a registration fee and an annual levy that would vary according to the number of relevant entities that have authorised them to act as levy collection agents.

These Regulations also amend the principal Regulations to exempt from registration controllers and processors that only cause or permit personal data to be processed where the processing is occasional, does not include any large scale or systematic processing and is not high-risk.

These Regulations also require all controllers and processors registered before the 31st December 2020 to give the Data Protection Authority an annual return in 2021.

Finally these Regulations amend the principal Regulations to prescribe revised registration fees and annual levies payable for registration. A consolidated registration fee and annual levy is payable for public entities linked to the States of Guernsey, the States of Alderney and the Chief Pleas of Sark respectively. Large organisations will have to pay a higher registration fee and annual levy than persons that are not large organisations.

As part of the transition to the new fees and levies regime commencing in 2021, no registration fee or annual levy would be payable between the 1st October and 31st December 2020.

Other than the transitional provision, these Regulations will come into force on the 1st January 2021. The transitional provision will come into force on the 1st October, 2020.