

UPDATE

New Data Protection Law for Guernsey Published

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The long-awaited draft Data Protection (Bailiwick of Guernsey) Law, 2017 (the **Draft Data Protection Law**) has now been released [[click here to see full detail](#)].

The Law once finalised will be a watershed moment for data protection across the Bailiwick, and will repeal and replace the existing Data Protection (Bailiwick of Guernsey) Law, 2001 (the 2001 Law). In essence, the Draft Data Protection Law is intended to protect personal data in a manner equivalent to and consistent with the European General Data Protection Regulation (Regulation (EU) 2016/679 (the **GDPR**)). As an EU Regulation the GDPR will have direct effect in all EU member states from 25 May 2018 (including the United Kingdom pre Brexit).

GDPR Relevance to Guernsey

Data protection laws control how data, and personal data in particular, is used and stored. Guernsey's current data protection legislation is set out in the 2001 Law (as amended). The GDPR has extra-territorial effect, meaning that it applies not only to entities based in the EU, but to any outside entity seeking to offer goods and services inside the EU. Pursuant to the GDPR, businesses are responsible for data protection compliance wherever they are based as long as they are processing EU citizens' personal data. To take account of the GDPR, Guernsey (and Jersey) are updating their data protection legislation so that their current status which permits the free transfer of data between the Channel Islands and the EU is maintained.

Key Changes

- The penalties for infringing the Draft Data Protection Law will be much tougher than under the 2001 Law. It is envisaged that penalties of up to £300,000 or 10% of global annual turnover (whichever is higher) to a limit of £10 million will be applicable. The penalties will be enforceable against processors and controllers of personal data who breach specified data protection principles. These principles require the data to be processed:
 - lawfully, fairly and transparently;
 - in accordance with specified, explicit and legitimate purposes;
 - only to the minimum extent necessary;
 - accurately, securely and accountably; and
 - stored only so long as necessary.
- The Draft Law goes into some detail as to what is expected to comply with these principles. For example, a detailed 'privacy notice' must be supplied setting out matters such as the specific purposes for collecting the data, where the information will be sent if outside the EU, information safeguards, together with information on how to complain and even appeal against data protection-related decisions. The 'trigger' for issuing such a notice is not a request from the individual concerned (although they can request such a notice) but the collection of the data.

- It is envisaged that there will be fines of up to £5 million for failing to comply with other data protection requirements covering, for example, anonymization or the failure to make reasonable efforts to verify that a person giving consent to the processing of the personal data of a child is a person duly authorised to give consent to that processing.
- The Draft Law also imposes an obligation to self-report data protection breaches as soon as practicable, and in any event within 72 hours of becoming aware of the breach, unless this is not practicable.
- Increased obligations are placed on 'data processors' along with significantly increased liability for breaches. A 'data processor' is defined as an individual or other person that processes personal data on behalf of a 'controller'. A 'controller' is defined as a party that alone or jointly determines the purposes and means of the processing. Examples of a controller would be a bank or mobile telephone company and a processor a company which has been sub-contracted to process data in some way (for example a company's payroll).
- There are also tighter rules about whether a data controller has the data subject's 'consent'. Consent must be able to be withdrawn without detriment.
- The Draft Data Protection Law expands a data subject's existing rights by including various new rights including the right to:
 - require data controllers to explain how long they intend to hold onto an individual's data;
 - require the data controller to respond with certain requested information promptly and within one month of receipt of the request (as opposed to the current 60 day period in Guernsey); and
 - request permanent deletion of personal data when it is no longer necessary for it to be retained by the data controller (this can be refused in various circumstances (e.g. a legal obligation for the data to be retained)).
- Data Protection Officers will be required to be appointed by public authorities or where processing is carried out as part of what is termed a 'core activity' of a controller or processor (where those operations require or involve 'large scale and systematic monitoring of data subjects' or 'large scale processing').
- A separate law enforcement ordinance will be prepared to implement equivalent EU provisions. This is one to watch as an indicator of the States' approach to enforcement, particularly in the early stages of the Draft Data Protection Law's implementation.

Given the effective date of 25 May 2018 we would recommend that organisations take note of the key points in the Draft with a view to their likely implementation. We will provide regular updates if there are any further important amendments to the Draft and will send out a further briefing when the final Law is enacted.

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