

BAILIWICK OF GUERNSEY



DATA PROTECTION COMMISSIONER REPORT FOR 2002



Bailiwick of Guernsey Photomap © States of Guernsey 2003

MISSION STATEMENT

The Data Protection Office will encourage respect for the private lives of individuals:

- by promoting good information handling practice,*
- enforcing data protection legislation and*
- seeking to influence national and international thinking on privacy issues.*

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FOREWORD

I am pleased to present my second public report on Data Protection in the Bailiwick of Guernsey that has been prepared in accordance with paragraph 5 of Schedule 5 of the Law.

This report covers the calendar year ending 31st December 2002, which has been an extremely busy and productive year both for my staff and for me. The highlight was the commencement in August of the Data Protection (Bailiwick of Guernsey) Law 2001.

Following the completion of our move into Frances House in January, I set about ensuring that all the preparations for the introduction of the Law would be completed in time for its commencement date. I am grateful for the support and hard work of my colleagues throughout the year in ensuring that all the publicity, training and awareness activities and the development of the new notification system and web site were indeed completed on time.

I should also record my thanks for the positive and extensive media coverage that has been given to data protection during this important year of change. This has undoubtedly contributed to the level of notifications and the increase in the number of enquiries and complaints that were handled by my office.

In addition, we were involved, together with our colleagues throughout the British Isles and Ireland, in the planning of the 24th International Conference that was held in Cardiff in September, and I am grateful to the Advisory and Finance Committee for providing specific financial support for the joint hosting of that conference, which served to enhance the international reputation of the Bailiwick.

It was also pleasing to receive confirmation at the conference that the European Commission would be undertaking an early assessment of the adequacy of the data protection régime within the Bailiwick; I look forward to progressing this with the staff of the Commission as a priority in the coming year.

2003 will also be challenging as the States presses forward with the reform of the machinery of government and with further proposals for the implementation of electronic government. Both of these related areas of development require vigilance to ensure that the resultant increased sharing of personal data within the public sector is accompanied by adequate safeguards for the protection of such data.

In the coming year I will also be looking in particular at the compliance of the private sector and devoting increased effort to ensuring that data controllers notify me of their processing activities as is required by the Law. 2003 should also see the implementation of new privacy regulations concerned with the use of electronic communications.



Dr. P.R. Harris, Data Protection Commissioner

April, 2003

INTRODUCTION TO THE BAILIWICK OF GUERNSEY

The Channel Islands are a group of islands, islets and offshore rocks located in the English Channel within the Gulf of St. Malo off the north-west coast of France. Although the Islands form part of the British Isles they do not form part of the United Kingdom. They are divided into the Bailiwicks of Guernsey and Jersey. The Bailiwick of Jersey comprises the largest and most southerly island of the group and two small reefs of islets and rocks known respectively as the Ecrehous and the Minquiers.

This report concerns the Bailiwick of Guernsey (hereafter referred to as ‘the Bailiwick’), which comprises the islands of Guernsey, Alderney, Sark Herm, Jethou, Brecqhou, together with the associated islets and offshore rocks. The populations and areas of the inhabited islands are as follows:

Islands of the Bailiwick of Guernsey	Population (2001 census)	Area sq. miles
Guernsey (including Herm, Jethou & Lihou)	59,807	25.11
Alderney	2,294	3.07
Sark (including Brecqhou)	591	2.11
Entire Bailiwick	62,692	30.29

The Islands are dependencies of the Crown (being neither part of the United Kingdom nor colonies) and enjoy full independence, except for international relations and defence, which are the responsibility of the United Kingdom Government. Guernsey¹, Alderney² and Sark³ are each governed by separate elected Legislative Assemblies. The actual day to day administration, however, is conducted through various Committees formed predominantly by members elected from the Legislatures. The Committees are given specific portfolios of responsibilities and are supported by an efficient, skilled and dedicated Civil Service.

Although much legislation is applicable to the individual islands, other legislation, such as that to do with data protection, applies on a Bailiwick-wide basis and the responsibilities of the Data Protection Commissioner similarly extend throughout the Bailiwick.

¹ www.gov.gg

² www.alderney.gov.gg

³ www.sark.gov.gg

DATA PROTECTION LEGISLATION

Guernsey has had a data protection law since 1986. The Data Protection (Bailiwick of Guernsey) Law, 1986 was passed by the States of Guernsey on 30 July, the States of Alderney on 3 September and the Chief Pleas of Sark on 1 October, 1986.

The 1986 Law followed closely the Data Protection Act 1984 of the United Kingdom and came fully into force in November 1987. The passage of the 1986 Law enabled the United Kingdom's ratification of the Council of Europe Convention 108⁴ "the Convention" in August 1987 to be extended to the Bailiwick.

On 26 July 2000 the States of Guernsey resolved to amend the data protection law to be fully compliant with Directive 95/46/EC⁵ "the Directive" and at the same meeting approved the establishment of an independent data protection Commissioner who in the interim would operate under the existing 1986 Law.

The 'Projet de Loi' entitled the Data Protection (Bailiwick of Guernsey) Law, 2001 "the Law" was approved by the States of Guernsey on 28 November 2001, by the States of Alderney on 23 January and by the Chief Pleas of Sark on 16 January 2002. The Law is intended to be a transposition of the Directive and follows closely the UK Data Protection Act 1998.

The Law obtained Royal Assent on 26 March and came fully into force on 1 August 2002, when some 16 Statutory Instruments were also made. These, again, mirrored for the most part those in force in the United Kingdom, but were modified to take account of differences in the legislative environment in the Bailiwick.

The passage of the Law has enabled the Bailiwick authorities to confirm to Her Majesty's Government that when the UK ratifies the Additional Protocol⁶ to the Convention, this ratification may be extended to the Bailiwick.

The general philosophy has been to draft data protection legislation to follow the UK legislation as closely as possible. This approach:

- a) gives greater certainty that the requirements of the Directive will have been transposed adequately;
- b) simplifies the compliance procedures for data controllers established in the Bailiwick, since many of them are associated with organisations based in the UK;
- c) enables the Commissioner to exploit access to expertise, literature and advice from the Office of the UK Information Commissioner;
- d) allows the re-use of notification software (and procedures) originally developed for the UK.

⁴ Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, 28 January 1981.

⁵ Directive 95/46/EC on the Protection of Individuals with regard to the Processing of Personal Data, 24 October 1995.

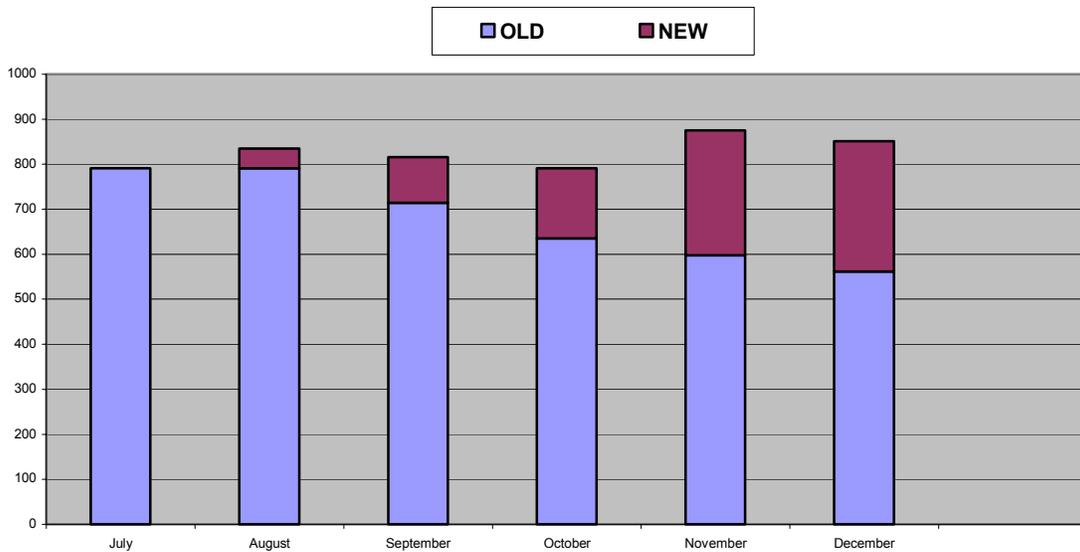
⁶ Additional Protocol to Convention 108 regarding supervisory authorities and transborder data flows, 8 November 2001.

NOTIFICATION

An important aspect of the transparency provisions of the Law is the requirement that data controllers notify the Commissioner of their processing of personal data. The Law requires notification on an annual renewable basis of all processing that is not exempt. Exemptions from notification exist for manual data and data associated with core business purposes of accounts, staff administration and marketing. Controllers registered under the 1986 Law are deemed to have notified until their existing registrations expire.

The chart below shows that growth in new notifications under the Law since August, 2002 has apparently been balanced by the reduction in old registrations under the 1986 Law that have expired. Because data controllers who may have had multiple registrations under the 1986 Law now need only one notification and more data controllers are exempt from notification under the 2001 Law, it would have been expected that the number of notifications might fall. In fact, over the period there have been 289 new notifications and 232 registrations that have been closed, resulting in a small but significant increase in the overall number of data controllers that have notified.

OLD Registrations and NEW Notifications



Of the 562 remaining old Registrations under the 1986 Law, 449 Registrations fall due for renewal in 2003, with the remainder expiring in 2004 and the first half of 2005.

The design of the Internet notification process⁷ was based on that used in the UK⁸, but it has been extended to support the full process of design, amendment and electronic submission of notifications. Draft notifications may be viewed and edited by the data controller and the staff of the Commissioner's office. Once a notification is complete and the notification fee has been received it is released for publication on the public register which is accessible to anyone on the Internet.

⁷ www.dpr.gov.gg

⁸ www.dpr.gov.uk

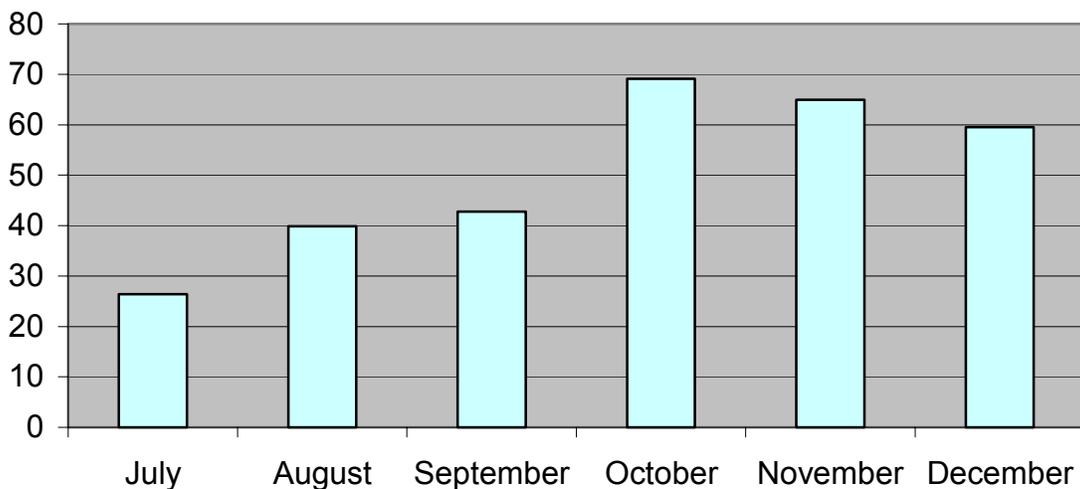
The development of the notification system involved considerable work, not only by the Commissioner and his staff who were involved with specification and testing, but also by the development staff from Eduserv⁹, the organisation that developed the UK Internet notification software. It is to be hoped that this effort will be rewarded as the other jurisdictions are currently examining the system with a view to its wider adoption. Further development of the system to provide improved support to back office processes is anticipated for the coming year.

Notification via the Internet has been very popular with over 80% of notifications being received in this way and about 25% of the fees being paid by annual direct debit. The exploitation of Internet notification has generated staff savings of at least one hour per notification compared with the registration procedure under the 1986 law and enabled more emphasis to be devoted to awareness and compliance activities. The increased use of direct debit is also expected to generate further administrative savings at renewal time.

The chart below illustrates the growth in the average daily activity on the online notification site, since its launch in July, up to the end of December.

The peak activity occurred during October, which coincided with the expiry of many registrations that had originally been taken out at the commencement of the previous Law in October 1987 and had been renewed thereafter on a three-yearly basis. The rate of renewals in 2003 is expected to fall as fewer old registration come up for renewal and so the activity on the site may well reduce.

Internet Notification Site Page Requests per Day

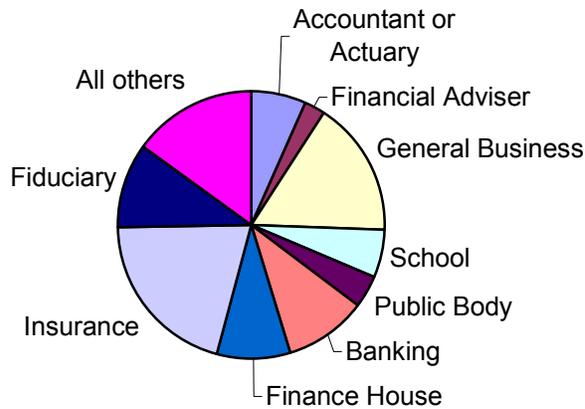


Analysis of site activity for 2002 shows about 20% was central administration by Eduserv, 30% data protection office administration and the remaining 50% was use by external organisations for notification, download of guides or searching of the register.

⁹ www.eduserv.org.uk

The new notification process requires data controllers to indicate the nature of their business activity. This not only simplifies the process, as it allows for the generation of a standardised draft notification based on a template, but also enables a record of the number of notifications to be maintained by industry sector.

New Notifications by Sector



The chart above shows the distribution of new notifications in 2002 by industry sector. The largest number of notifications were derived from Insurance (21%), followed by General Business (16%), All others (15%), Banking (10%), Fiduciary (10%) and Finance House (9%).

The accuracy of this analysis is dependent on controllers having selected a template that reflects their business sector, which does not always occur; nevertheless, it is expected that the statistics will improve as an increasing number of old registrations under the 1986 Law are replaced by new notifications under the 2001 Law. Because of the three-year registration period under the old law, this process will not be complete until mid 2005.

There has been disturbing evidence of a failure of some data controllers to realise the importance of notifying under the new law prior to the expiry of their registrations under the old law. This is of some concern as notifications cannot be backdated and failure to notify whilst continuing to process personal data is a criminal offence. Accordingly, in any interim period between a lapsed registration and the completion of a notification, data controllers risk prosecution, especially if any complaint is made that would result in an assessment of their processing being undertaken.

The Commissioner will be looking at further measures to increase compliance with the notification regulations during 2003.

STAFFING

The establishment of the Office of the Data Protection Commissioner presently comprises three staff: the Commissioner and Assistant Commissioner who work full time and the Administrative Assistant who works part-time. The Commissioner is a statutory public appointment and his staff are seconded from the Civil Service, but wholly responsible to him.

Under section 2 of schedule 5 of the Law, “*the {Advisory and Finance} Committee must make available to the Commissioner such numbers and descriptions of staff as he may reasonably require for the proper and effective discharge of his functions.*” The Commissioner is of the view that the current establishment of one full time Assistant and one part time Administrator is the minimum level of staffing resource necessary for him to undertake his functions. However, there is no evidence at present that an increased establishment is required.

Anne Wiggins was appointed to the post of Assistant Commissioner in August. She replaced Richard Ansell who was on secondment from the UK Information Commissioner’s Office in Wilmslow, Cheshire. Mr. Ansell had been in Guernsey for sixteen months during which time he had provided seminars to both public and private sector organisations in order to raise awareness of the forthcoming Law. He had also provided considerable help with the establishment of the administrative procedures required for implementation of the 2001 Law. He returned to the UK at the end of August and the Commissioner is grateful to him for giving the Bailiwick the benefit of his knowledge and experience and to the UK Information Commissioner for agreeing to his secondment.

The Assistant Commissioner is primarily responsible for raising awareness of data protection issues and to this end she has provided training to business and finance organisations. Although relatively new to the field of data protection she has received favourable feedback from the organisations that she has visited so far. She has also produced and distributed advice literature throughout the Bailiwick so that individuals as well as organisations can be made aware of their rights under the law. In addition she assists the Commissioner in other areas such as compliance as well as being responsible for some administrative functions, such as the generation and completion of draft notifications.

The Administrative Assistant provides invaluable administrative support, especially to the notification process and to the maintenance of the internal accounts and filing systems. During 2002 she worked a significant amount of overtime, predominantly related to the large number of old registrations that expired and the resulting level of notification activity.

It is anticipated that there may be less time needed in this area during 2003 as there will be fewer registrations under the 1986 law that fall to expire. This may result in a reduced need for overtime working. However, the staffing level will continue to be regularly reviewed in relation to the notification workload and the number of enquiries and complaints that are received and if any significant shortfall in resources is identified, the Advisory and Finance Committee will be informed at the earliest opportunity.

AWARENESS

There is a continual need to ensure that individuals are made aware of their rights under the Law and organizations that process personal data are made aware of their responsibilities.

The Office of the Data Protection Commissioner has been pro-active throughout 2002 in raising awareness by:

- Making use of the media,
- Delivering presentations and training,
- Giving compliance advice,
- Developing the Internet web site.

Making use of the media

The Commissioner issued nine press releases throughout 2002; these gave information about:

- the new law,
- the online notification system,
- the publication of advice booklets,
- his attendance at the conference in Brussels to discuss the Directive,
- misleading offers from unofficial data protection agencies,
- the consultation process on the proposed Privacy Regulations.

The Commissioner was interviewed on a number of occasions on local radio and television.

Further joint press releases were also issued on behalf of the organizations involved with the 24th International Data Protection Conference in Cardiff.

Throughout the year the local media have proved very supportive of the publicity campaigns that have been mounted and the Guernsey Press in particular has never failed to publish material issued by the Commissioner's office.

A total of nineteen articles on data protection, including a five part series on the implications of the new law, appeared in the local press. These articles included interviews with the Commissioner and the former Assistant Commissioner and various data protection issues and initiatives were commented and reported upon.

A number of articles on data protection have appeared in the Press and in other specialised publications written by various professionals highlighting the passage of the new Law. These have generally been accurate and positive.

One article, prompted by a parish official, complained about apparent obstacles to data sharing posed by the Law. This necessitated the Commissioner writing an open letter to the press to explain the situation.

Another letter from a local academic included a misleading interpretation of personal data, which again required a response from the Commissioner in the form of a letter to the Editor.

Delivering presentations and training

Prior to the new Law coming into force in August, Richard Ansell, Assistant Commissioner who was on secondment from the Office of the UK Commissioner, had been giving presentations to organizations throughout the Bailiwick to raise awareness of the new Law. Richard returned to the UK at the end of August and was replaced by Anne Wiggins, who is on secondment from the Guernsey Civil Service.

Between January and the end of July Richard delivered twenty presentations mainly to organizations within the financial sector. Between September and December Anne has delivered eleven sessions to organizations within the financial and general sectors. In addition the Commissioner has been invited by various organizations to be a guest speaker at lunchtime seminars and also spoke to local grammar school students.

The Commissioner and his assistant were pleased to have been asked to run a workshop session at a conference held on 24 October that was organised by the Confederation of Guernsey Industry and the Training Agency.

Giving compliance advice

To assist data controllers with compliance the office has also given advice and guidance on the following to various organizations:

- Standing orders
- Protocols
- Procedures
- Design of application forms
- Contracts with data processors
- Recording of telephone calls

Representatives of organizations have called at the office to discuss the impact of the Law on their working practices and additionally the Commissioner and Assistant Commissioner have visited a number of organizations on site for this purpose.

A press release in October informed the public of the availability of the following literature which has been produced by the Data Protection Office. The brochures are free of charge and are available in hard copy but may also be downloaded from the Commissioner's website.

Guidance Handbooks (A4)

- Charities
- Data Controllers
- Financial Institutions
- Notification Exemptions
- Notification Handbook
- Small Businesses
- States Committees

Advice Booklets (A5)

- Baby mailing preference service (how to stop unwanted mail about baby products)
- Be Open ...with the way you handle information (obtaining data fairly and legally)
- CCTV Checklist
- Data Controllers (how organisations must process personal data)
- Your rights under the Law: Guidance for individuals
- Mailing, telephoning, fax and e-mail preference services
- No Credit (how to access, and correct, details held by credit reference agencies)
- The Data Protection Law and You (advice for small businesses)
- Violent warning markers: use in the public sector
- Disclosures of vehicle keeper details

The Assistant Commissioner has circulated the literature to a number of public, private and voluntary organizations throughout the Bailiwick. She keeps a record of the locations where the literature is sent so that a follow up can be undertaken to assess its uptake and impact. The first review date for this is in January 2003.

Approximately 500 copies of the literature have been distributed during 2002. Two of the advice booklets “Individual Rights” and “Violent warning markers” proved to be in such great demand that the office could not cope with their production and so the two thousand copies that were requested had to be produced by a local printing firm and will be issued early in 2003.

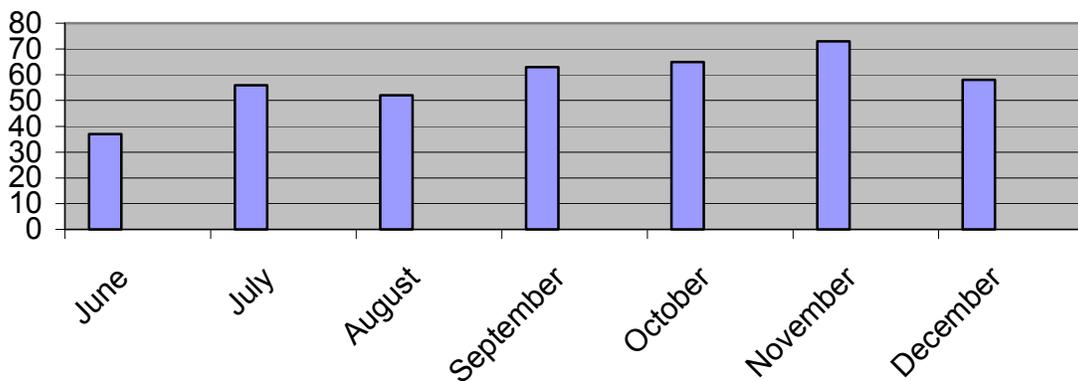
In addition, Notification Guidance Handbooks are sent out to data controllers when their registrations under the 1986 law are about to expire.

Former Assistant Commissioner Richard Ansell is a keen photographer. His legacy to this office has been a set of photographs of Guernsey and Alderney that have been assembled into a calendar for 2003. This has been circulated to Data Protection Authorities worldwide and also to those agencies that were invited to participate in the survey on Privacy Regulations. As well as depicting scenic locations throughout the Bailiwick the calendar reminds all who see it of the data protection principles. It looks set to become a collectors’ item.

Developing the Internet Web Site

During the year a major effort was devoted to redesigning the Internet web site¹⁰.

Daily Average of Visits to Internet Site

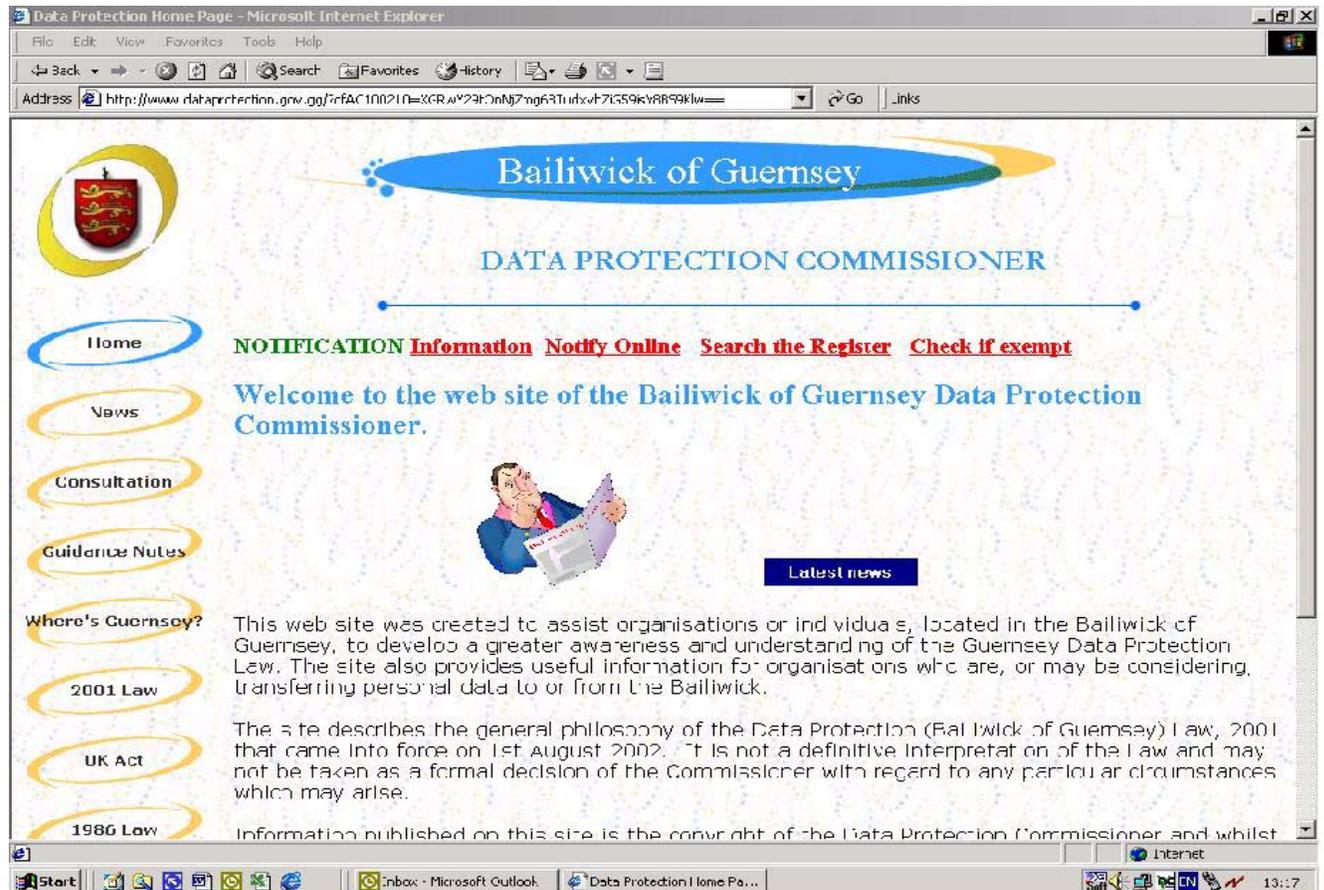


The chart above shows that the usage of the site has increased to an average of about 60 visits per day. This statistic is felt to be rather more indicative of activity than the more usual figure of “hits” which can be misleading. The most popular section of the site has been “Guidance Notes”, where visitors are able to view or download a copy of all of the guidance notes that have been published during the year.

¹⁰ www.dataprotection.gov.gg

The Internet site was developed in house and is currently maintained by the staff of the Information Services Department of the Advisory and Finance Committee.

The site is updated on a regular basis and includes copies of all of the material which is published by the Commissioner's office, together with links to other data protection sites and information for data subjects about complaint handling.



The range of information available on the Internet site has now grown to the extent that a redesign will be required. The Commissioner is grateful for the further assistance of the Information Services Department which has offered to undertake this redesign process during the coming year.

ENFORCEMENT

The Law provides for a number of offences:-

- a) Failure to notify or to notify changes to an entry;
- b) Unauthorised disclosure of data, selling of data or obtaining of data;
- c) Failure to comply with a Notice.

The Commissioner may serve an Enforcement Notice where he has assessed that a controller is not complying with the principles or an Information Notice where he needs more information in order to complete an assessment.

Complaints by data subjects to the Commissioner concerning notification, or disclosure offences would be dealt with as potential criminal prosecutions by the Police and Law Officers. Although no prosecutions were undertaken in 2002 for failure to notify, this is an area which will be kept under particular review in the forthcoming year.

One allegation of unauthorised disclosure was investigated by the Police as a criminal offence under section 55 of the Law. It was decided on this occasion not to prosecute, but to issue a caution to the offender.

Complaints involving non-compliance with principles are dealt with as a request for assessment. Only if a data controller fails to comply with an Enforcement Notice or an Information Notice issued during the assessment process would a prosecution be contemplated.

There were fifteen requests for assessments received from individuals who believed that their personal data had not been handled in accordance with the Law.

Three of these cases are ongoing as the Commissioner is still gathering information before he can deliver a final judgment.

Of the remaining twelve there were two where the Commissioner found that no breach of the Law had occurred.

In the remaining cases, the data controllers complied with the Commissioner's recommendations to rectify technical or organizational deficiencies that contributed to the identified breaches of the Law.

A Preliminary Enforcement Notice was served on one organization which had not initially complied with the Commissioner's advice. Following this action, the organization complied without further delay.

Brief details of the assessments undertaken during the year are as follows:

- 1) An organization was found to have breached the third principle in that there was an excessive transfer of a subject's sensitive data from an employee of the organization to an external agency. This resulted in the affected individual suffering distress.

The organization took measures to make their employees aware of the Data Protection Law and placed the issue of confidentiality high on the agenda of a meeting of an appropriate and influential committee. Relevant professional

guidelines on the sharing of information were also obtained and circulated to appropriate personnel.

The data subject was able to have the excessive data removed and have these replaced with a summary in the personal records maintained by the recipient agency.

- 2) A Guernsey agency sent unsolicited mail to a United Kingdom based resident. The mail clearly was for another recipient and was wrongly addressed. The Guernsey agency had obtained the outdated and therefore inaccurate data from a mailing list purchased from a UK agency. The situation was rectified by the individual's details being removed from the local agency's database.
- 3) A data controller refused a subject access request which was needed prior to some civil proceedings. The Commissioner wrote to the data controller and drew attention to section 7 of the law. There was subsequent compliance.
- 4) A UK based resident was a regular customer of a Guernsey based mailing company. He received an additional account from the company which was in an erroneous alias. This caused some distress and the client closed his accounts and made a subject access request to establish why the erroneous alias had been created. The subject access request was ignored and the client continued to receive mail shots.

After the Commissioner's intervention the client's name was suppressed from the company's data base and the subject access request was granted. After an internal investigation an employee of the company was disciplined and the client received an apology. There was a review of the company's internal procedures and revisions of procedures resulted.

- 5) Another UK based resident received unsolicited mail from a Guernsey company. The company had purchased a mailing list from a UK company. The client's name was suppressed from the local company's database. The client was advised to contact the UK Commissioner as it was the UK based company who had used the client's data for marketing purposes without consent.
- 6) An individual complained that a financial institution had lost both her and her husband's personal and sensitive data. This resulted in distress as well as a delay in the couple having necessary insurance cover. The data controller undertook a rigorous investigation and an improvement in transfer procedures resulted.
- 7) An individual suffered distress after an unauthorized disclosure of a personal bank account. As a result of fraud an account which was in joint names had become overdrawn and a transfer was made from the subject's personal account without consent. The spouse had been unaware of the existence of the personal account hence the resulting distress.

The data controller undertook an investigation which highlighted a training need for staff where money transfer procedures were concerned. The client also received an apology and a compensation payment.

- 8) The UK Commissioner's office approached the Commissioner after a locally based mailing company had sent unsolicited mail to a UK resident. Following the Commissioner's intervention the data subject's name was suppressed from the mailing list.
- 9) A resident of Alderney requested the Commissioner to enquire into Electoral Registration custom and practice and the legal basis of Electoral Registration within the Bailiwick. The resident was prompted to do this as he considered that the form of application for Inscription in the Register of Electors for Alderney did not comply with the Data Protection Law in that it asked for excessive and irrelevant information.

After investigation and consultation with the Law Officers and the Clerk of the States of Alderney it was established that the design of the form did not fully comply with Section 33(3) of the Government of Alderney Law, 1987. Furthermore the Law itself had not been amended to cater for residentially qualified nationals of other European States to join the electoral register.

The Election Procedure Ordinance for Alderney is to be reviewed in the light of the outcome of the investigation.

- 10) A Guernsey organization published personal data when the individual had specifically requested that this should not happen. This caused the individual distress as there were very good reasons why this information should not have been published.

The organization did not comply initially with the Commissioner's recommendations to improve organizational practices and procedures. A Preliminary Enforcement Notice was served and this resulted in the organization taking note and undertaking the necessary actions. The data subject received an apology and a small compensatory award.

- 11) A user of an online forum complained that the editor of the forum had disclosed personal data to another online user. The Commissioner while finding that there was no substantive breach of the Law found it necessary to advise the Editor of a more appropriate manner in which to handle future similar occurrences. Both parties made representations on this judgment so the Commissioner undertook a formal assessment, which upheld his original decision and gave both parties a detailed account of his reasoning. A significant point to emerge from the assessment was that the IP address that is allocated to a computer cannot normally be regarded as personal data, because there is not an unequivocal link between that address and an individual.
- 12) A business organisation complained about the content of an unsolicited fax it had received that offered to sell contact names and addresses. The complaint was found to be ill founded as the author of the fax was offering to sell lists of company names rather than names of individuals and this did not represent unlawful processing of personal data for marketing purposes. The complainant was however advised of the possibility of registering with the fax preference service to prevent the receipt of further unsolicited fax messages.

In addition, two complaints were received about the disclosure of e-mail addresses in communications sent out to a large number of recipients. This problem arises because of an unhelpful feature of Microsoft Outlook that by default discloses the addresses of all the recipients of an e-mail to each other. Only by using the normally hidden 'BCC' feature of Outlook (and similar e-mail programs) can this problem be avoided. The first complaint was upheld in that the sender of the e-mail was an Internet Service Provider (ISP) that had disclosed the personal addresses of some of its clients to each other. The ISP issued an immediate apology, compensated its users and revised its procedures. The second complaint was not upheld because the disclosure was of business addresses rather than personal ones. Whilst this raised issues of business confidentiality, the Commissioner decided that there were no data protection breaches in this particular case. Nevertheless, the company involved did apologise to its users over the breach of business confidentiality and revised its internal procedures to prevent a recurrence.

THE DATA PROTECTION PRINCIPLES

1. Personal data shall be processed fairly and lawfully and special conditions apply to the processing of sensitive personal data.
2. Personal data shall be obtained for one or more specified and lawful purposes.
3. Personal data shall be adequate, relevant and not excessive in relation to the purposes for which they are processed.
4. Personal data shall be accurate and kept up to date.
5. Personal data shall not be kept for longer than necessary.
6. Personal data shall be processed in accordance with the rights of data subjects.
7. Technical and organisational measures shall be taken against unauthorised or unlawful processing and against accidental loss or damage to personal data.
8. Personal data shall not be transferred to a country or territory outside the Bailiwick unless the destination ensures an adequate level of protection for the data.

INTERNATIONAL LIAISON

European Spring Conference

The Commissioner was invited to attend this conference of European Data Protection supervisory authorities, which was held in Bonn on 25-26 April 2002.

The conference was dominated by the data protection implications of security legislation that was being proposed throughout Europe post 11 September 2001, in particular proposals for the mandatory retention of communications traffic data that threatened to breach the privacy rights of ordinary citizens. In addition, Auditing and Certification concepts, biometric identification and other current issues were discussed.

The Commissioner presented a paper at the conference discussing implementation issues with the application of the Directive to Third Countries (as exemplified by the Bailiwick). This provoked a useful discussion on how relationships between the data protection authorities within the European Union and those in Third Countries might be improved.

British and Irish Data Protection Authorities

A regular meeting of the Commissioners and Registrars from the UK, Ireland, Guernsey, Jersey and the Isle of Man was held on 16-17 May 2002. These meetings are particularly helpful to the smaller jurisdictions as they help to ensure a consistent interpretation of the law and an equivalent enforcement regime across the British Isles and Republic of Ireland. The main topic of discussion on this occasion was the organisation of the International Conference, which was being jointly hosted by all five jurisdictions.

Other topics discussed included the timetable for the implementation of new legislation within each jurisdiction and progress with requests for an adequacy determination by the European Commission.

In the autumn, both the UK Commissioner and the Isle of Man Registrar - Elizabeth France and Lynn Keig - left their posts to be replaced by Richard Thomas and Iain Macdonald respectively. Michael Smith, the Jersey Registrar, is also due to retire during the course of 2003. The Commissioner appreciates the considerable help and support that he has received from these colleagues and looks forward to the further development, with their successors, of the useful working relationship that has grown up over many years.

International Conference

Guernsey, along with the United Kingdom, the Republic of Ireland, Jersey and the Isle of Man, hosted the 24th International Conference of Data Protection Commissioners¹¹, which was held between 09 -11 September 2002 at the City Hall, Cardiff. The Commissioner was accompanied to the conference by the (newly appointed) Assistant Commissioner, Anne Wiggins and the Data Protection Administrator, Wendy Ozanne.

Over 300 delegates, representing public and private organizations from over 25 countries around the world attended. The theme of the conference, "Information Rights in the 21st Century: Confronting the Myths" aimed to tackle crucial issues affecting the world of

¹¹ www.informationrights2002.org

information rights and data protection and to explode some commonly held misconceptions.

The conference opened with a closed session for commissioners. During that session the Commissioner led a debate that concluded with the commissioners recognising the independent status of the Crown Dependencies (including the Bailiwick) as it affected the passage of resolutions.

Following the closed session the commissioners issued a public communiqué as follows:

Statement of the European Data Protection Commissioners at the International Conference in Cardiff (9-11 September 2002) on mandatory systematic retention of telecommunication traffic data

The European Data Protection Commissioners have noted with concern that in the third pillar of the EU, proposals are considered which would result in the mandatory systematic retention of traffic data concerning all kinds of telecommunication (i.e. details about time, place and numbers used for phone, fax, e-mail and other use of the Internet) for a period of one year or more, in order to permit possible access by law enforcement and security bodies.

The European Data Protection Commissioners have grave doubt as to the legitimacy and legality of such broad measures. They also want to draw attention to the excessive costs that would be involved for the telecommunication and internet industry, as well as to the absence of such measures in the United States.

The European Data Protection Commissioners have repeatedly emphasised that such retention would be an improper invasion of the fundamental rights guaranteed to individuals by Article 8 of the European Court of Human Rights (see Opinion 4/2001 of the Article 29 Working Party established by Directive 95/46/EC, and Declaration of Stockholm, April 2000).

The protection of telecommunication traffic data is now also provided by Directive 2002/58/EC of the European Parliament and the Council concerning privacy and electronic communications (Official Journal L 201/37), under which processing of traffic data is in principle allowed for billing and interconnection payments. After lengthy and explicit debate, retention of traffic data for purposes of law enforcement should meet strict conditions under Article 15 (1) of the Directive: i.e. in each case only for a limited period and where necessary, appropriate and proportionate in a democratic society.

Where traffic data are to be retained in specific cases, there must therefore be a demonstrable need, the period of retention must be as short as possible and the practice must be clearly regulated by law, in a way that provides sufficient safeguards against unlawful access and any other abuse. Systematic retention of all kinds of traffic data for a period of one year or more would be clearly disproportionate and therefore unacceptable in any case.

The European Data Protection Commissioners expect that the Article 29 Working Party will be consulted on measures that may emerge from the third pillar discussions before they are adopted.

The remainder of the conference was open to all and developed three underlying themes to encourage discussion and debate that would challenge thinking and promote innovation within the field of privacy protection and freedom of information. Those themes were:

- “Data protection principles, by preventing information sharing, hold back both modern government and efficient business – myth or reality?”
- “Anonymity has no place in the age of global information systems and international terrorism – myth or reality?”
- “Effective data protection can only be delivered through independent powerful supervisory authorities – myth or reality?”

Each theme was the subject of a plenary session delivered by eminent speakers from different organizations throughout the globe. Following each plenary session delegates were able to attend one of three parallel workshops to debate the issues in more detail with a panel of invited speakers.

Following the first plenary session the Commissioner led a workshop which was entitled, “Is there a role for technology as a privacy protector in information sharing?” His three invited speakers spoke respectively on the privacy aspects of Geographic Information Systems (GIS), Smart Cards and how to secure the confidence of banking customers as the delivery of services become more technical and less personal.

There were over sixty attendees at this workshop who asked pertinent questions of the speakers. A relevant discussion ensued as to how the rights of individuals in relation to the handling of their personal data could be preserved as technologies further advanced.

Each member of the Guernsey delegation attended a different workshop after the second and third plenary sessions so as to have a broad perspective of all relevant data protection issues. There were also plenty of opportunities to meet others who work in the field of data protection and this proved to be an enriching and beneficial experience.

In addition, Guernsey had a stand at the conference which promoted the Bailiwick as a holiday destination and there was an excellent uptake of the promotional material that had been provided by the Tourist Board and the Post Office.

European Commission Conference on Implementation of the Directive

The Commissioner was invited to attend this conference that was organised by the European Commission to review the implementation of the Data Protection Directive (95/46/EC).

The conference was held in Brussels from 30 September – 1 October and attended by Data Protection Authorities from Europe and elsewhere in the world.

The Commissioner spoke at the closing plenary session on the impact of the Directive on Third Countries. He stressed the need for “adequate third countries” to be given equivalent treatment by Member States in the application of legislation concerned with data transfers and remote processing.

The conference closed with a speech by Frits Bolkstein the Commissioner for the Internal Market. He made it clear that the Commission had no intention of undertaking major revisions to the Directive in the near future, but that further efforts would be made to promote the flow of personal data by bringing its implementation in Member States into closer harmony.

Liaison with the UK Government

The Commissioner has traditionally maintained close links with the staff of the Freedom of Information and Data Protection Unit within the Lord Chancellor's Department. Staff from that Unit were most helpful in providing advice during the development of the 2001 Law and its associated Statutory Instruments.

The Unit has consistently promoted the need for the European Commission to make an early decision on the adequacy of the Data Protection régime within the Bailiwick. It is pleasing to note that this pressure has now borne fruit and that the Commission will be assessing the régime within the Bailiwick in the coming year.

Whilst there were no formal meetings with the staff of the Unit in 2002, there was frequent communication by other means and informal meetings were held during the other conferences; a more formal meeting with the staff is planned for early 2003, once the new commissioners in the UK and Isle of Man are in post.

The Unit has also provided useful contacts with the staff from the Department of Industry over the implementation of regulations that would comply with the European Directive on privacy and electronic communications¹².

¹² Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector.

DATA PROTECTION WITHIN GOVERNMENT

The States of Guernsey exercise executive or administrative functions through Committees every one of which is answerable to the States and in the States for its acts. The Committees are established by the States by Resolution with specific mandates or are constituted by legislation with statutory powers and duties. They administer the various functions of government in Guernsey such as finance, civil service, agriculture, administration, health, social security, education, housing, horticulture, tourism, employment, water, law and order and town and country planning. The States over a period of time have constructed a permanent civil service under the immediate control and direction of Committees of the States. In Guernsey, therefore the civil service derives its authority from the States and not from the Crown as in the United Kingdom.

Although the States is a single legal person and its individual Committees do not have separate legal personality, Section 62 of the Law makes specific provision for each Committee of the States to be subject to the same obligations and liabilities under the Law as a private person; *“and for the purposes of the Law each Committee of the States shall be treated as a person separate from any other such Committee and a person in the public service of the States shall be treated as a servant of each such Committee to which his responsibilities or duties relate.”*

This is particularly important as it means that each Committee must notify its processing separately from each other Committee and data collected by one Committee may not be disclosed to another Committee unless there is a legal obligation to do so (or unless some other valid exemption applies).

The States are currently looking at ways of reorganising the Committee structure to improve the effectiveness of the machinery of government and are also looking to e-government as a way to improve their relationship with citizens.

Without adequate safeguards, these developments could compromise the protection of personal data processed by the States. In order to address these concerns the States have appointed a Data Protection Adviser to work across all committees and to be the primary liaison point between States Committees and the Commissioner’s Office.

The Commissioner welcomes the appointment of the Adviser as a positive step towards ensuring that data protection concerns are given adequate consideration during this process of reorganisation. The Commissioner has also been invited to join the ‘Citizen Access Group’ that reports to the Advisory and Finance Committee’s e-government Steering Committee and is looking at ways in which the effectiveness of the administration may be improved by providing more co-ordination between the personal information that is processed by States Committees. The Group is examining the feasibility of developing corporate information and transaction services and will be concerned with the specification of any legislative changes needed to bring this about.

OBJECTIVES FOR 2003

Legislation

Consultation on the European Directive 2002/58/EC has commenced with a view to bringing in Regulations concerned with the privacy of electronic communications in the autumn of 2003. Information will also be drawn from a similar consultation exercise that will be undertaken by the UK Department of Industry early in 2003.

The data protection implications of related legislation, in particular, a Rehabilitation of Offenders Law and amendments to the Interception of Communications Law will be kept under review.

Adequacy Determination

Further work is anticipated on ensuring a positive adequacy finding for the data protection régime by the European Commission. This finding is considered essential to ensuring the free flow of personal data between the Bailiwick and other adequate territories (including the UK and other Member States of the European Economic Area).

International Liaison

The Commissioner has been invited to attend the European Spring meeting of data protection Authorities in Seville and the International Conferences in Melbourne and Sydney in the autumn. He has also been invited to speak to members of the Office of the Official Information Commission in Thailand en route to Australia. Close liaison with the BIDPA (British and Irish Data Protection Authorities) will continue with formal meetings taking place in the spring and autumn.

Governmental meetings with officials from the Lord Chancellor's Department are expected to be arranged as issues arise.

Raising Awareness

It will be necessary to maintain the momentum of the media awareness campaign and further seminars and talks will be arranged.

Collaboration with the Training Agency will continue with the aim of assessing the feasibility of running courses leading to formal qualifications in data protection.

It is also planned to promote more specialised training sessions using UK specialists, with training being targeted separately to financial sector organisations, other private sector organisations and the public sector.

Compliance

Targeted compliance activities will be organised to increase the notification level of local organisations. Improvements will be made to the notification system to derive further statistical information that will aid compliance monitoring. The introduction of sector-specific Codes of Practice based on those in use in the UK will be encouraged.

Government

Further advisory work will be undertaken, specifically as a consequence of the Commissioner's membership of the Advisory and Finance Committee's Citizen Access Group and the States Digimap Management Board.

FINANCIAL REPORT

The Data Protection Office is funded by a grant from the Advisory and Finance Committee that is based on a budgetary estimate of expenditure prepared annually by the Commissioner.

In accordance with Section 3 of Schedule 5 of the Law, all fees received are repaid into the General Revenue Account.

The Data Protection Office's Income and Expenditure, which are included within the accounts for the Advisory and Finance Committee, have been as follows:

<u>INCOME</u>	2002	2001
	£	£
Data Protection Fees ¹	5,902	16,950
<u>EXPENDITURE</u>		
Rent	22,853	18,150
Salaries and Allowances	120,014	69,458
Travel and Subsistence ²	13,219	5,099
Furniture and Equipment ³	11,020	23,838
Publications	2,693	2,176
Post, Stationery, Telephone ⁴	3,919	--
Heat Light, Cleaning ⁴	4,015	--
TOTAL	<u>£177,733</u>	<u>£118,721</u>

NOTES

¹Fees were £75 for a new registration or to renew an existing registration for a three year period, up to 31st July and £35 per annual notification from 1st August 2002, when the new law came into force.

The Fee Income for 2001 is shown above on a cash-received basis, whereas the Income for 2002 is shown on an accruals basis. The cash received in 2002 was in fact £24,990 but most of this sum was accrued into subsequent years, to cover the life of the 3-year registrations (Jan-July) and 1-year notifications (Aug-Dec).

²This sum includes the Bailiwick's share of the costs of the International Conference held in Cardiff in September (£7,928).

³Furniture and equipment costs exclude the costs of the notification system supplied by Eduserv (£19,200) that were funded from the Advisory and Finance Committee's e-government capital budget. Annual maintenance and development costs of the notification system will be included in future years' accounts.

⁴'Post Stationery, Telephone' and 'Heat, Light Cleaning' are new heads of expenditure resulting from the move of the Office to separate accommodation in January 2002.

Further information about compliance with the Data Protection (Bailiwick of Guernsey) Law 2001 can be obtained via:

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