



# **The Data Protection Principles**

## **Data Protection (Bailiwick of Guernsey) Law, 2001**

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## Introduction

Schedule 1 of the Data Protection (Bailiwick of Guernsey) Law, 2001 (“the Law”) provides for eight enforceable Principles of data protection, which form the bedrock of the legislation and control the manner in which personal data is handled. All persons processing personal data are expected to comply with these Principles.

This guidance document details each of the eight Principles and provides notes on how to interpret them.

## First Principle

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 (*see Appendix 1*) is met; and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 (*see Appendix 2*) is also met.

### **INTERPRETATION:**

1. (1) In determining for the purposes of the first principle whether personal data are processed fairly, regard is to be had to the method by which they are obtained, including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed.

(2) Subject to paragraph 2, for the purposes of the first principle data are to be treated as obtained fairly if they consist of information obtained from a person who –

- (a) is authorised by or under any enactment to supply it, or

(b) is required to supply it by or under any enactment or by any convention or other instrument imposing an international obligation on the States.

2. (1) Subject to paragraph 3, for the purposes of the first principle personal data are not to be treated as processed fairly unless –

(a) in the case of data obtained from the data subject, the data controller ensures so far as practicable that the data subject has, is provided with, or has made readily available to him, the information specified in sub-paragraph (3), and

(b) in any other case, the data controller ensures so far as practicable that, before the relevant time or as soon as practicable after that time, the data subject has, is provided with, or has made readily available to him, the information specified in sub-paragraph (3).

(2) In sub-paragraph (1)(b) "the relevant time" means –

(a) the time when the data controller first processes the data, or

(b) in a case where at that time disclosure to a third party within a reasonable period is envisaged –

(i) if the data are in fact disclosed to such a person within that period, the time when the data are first disclosed,

(ii) if within that period the data controller becomes, or ought to become, aware that the data are unlikely to be disclosed to such a person within that period, the time when the data controller does become, or ought to become, so aware, or

(iii) in any other case, the end of that period.

(3) The information referred to in sub-paragraph (1) is as follows, namely–

- (a) the identity of the data controller,
- (b) if he has nominated a representative for the purposes of this Law, the identity of that representative
- (c) the purpose or purposes for which the data are intended to be processed, and
- (d) any further information which is necessary, having regard to the specific circumstances in which the data are or are to be processed, to enable processing in respect of the data subject to be fair.

3. (1) Paragraph 2(1)(b) does not apply where either of the primary conditions in sub-paragraph (2), together with such further conditions as may be prescribed by the Committee by Order, are met.

(2) The primary conditions referred to in sub-paragraph (1) are –

- (a) that the provision of that information would involve a disproportionate effort, or
- (b) that the recording of the information to be contained in the data by, or the disclosure of the data by, the data controller is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.

4. (1) Personal data which contain a general identifier falling within a description prescribed by the Committee by Order are not to be treated as processed fairly and lawfully unless they are processed in compliance with any conditions so prescribed in relation to general identifiers of that description.

(2) In sub-paragraph (1) "a general identifier" means any identifier (such as, for example, a number or code used for identification purposes) which –

- (a) relates to an individual, and
- (b) forms part of a set of similar identifiers which is of general application.

## Second Principle

Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

### **INTERPRETATION:**

5. The purpose or purposes for which personal data are obtained may in particular be specified-

- (a) in a notice given for the purposes of paragraph 2 by the data controller to the data subject; or
- (b) in a notification given to the Commissioner under Part III of this Law.

6. In determining whether any disclosure of personal data is compatible with the purpose or purposes for which the data were obtained, regard is to be had to the purpose or purposes for which the personal data are intended to be processed by any person to whom they are disclosed.

## Third Principle

Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

## Fourth Principle

Personal data shall be accurate and, where necessary, kept up to date.

### **INTERPRETATION:**

7. The fourth principle is not to be regarded as being contravened by reason of any inaccuracy in personal data which accurately record information obtained by the data controller from the data subject or a third party in a case where-

- (a) having regard to the purpose or purposes for which the data were obtained and further processed, the data controller has taken reasonable steps to ensure the accuracy of the data; and
- (b) if the data subject has notified the data controller of the data subject's view that the data are inaccurate, the data indicate that fact.

## Fifth Principle

Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.

## Sixth Principle

Personal data shall be processed in accordance with the rights of data subjects under this Law.

### **INTERPRETATION:**

8. A person is to be regarded as contravening the sixth principle if, but only if-

- (a) he contravenes section 7 by failing to supply information in accordance with that section;
- (b) he contravenes section 10 by failing to comply with a notice given under section 10(1) to the extent that the notice is justified or by failing to give a notice under section 10(3);
- (c) he contravenes section 11 by failing to comply with a notice given under section 11(1); or
- (d) he contravenes section 12 by failing to comply with a notice given under section 12(1) or (2)(b) or by failing to give a notification under section 12(2)(a) or a notice under section 12(3).

## Seventh Principle

Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

### **INTERPRETATION:**

9. Having regard to the state of technological development and the cost of implementing any measures, the measures must ensure a level of security appropriate to-

- (a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage as are mentioned in the seventh principle; and
- (b) the nature of the data to be protected.

10. The data controller must take reasonable steps to ensure the reliability of any employees of his who have access to the personal data.

11. Where processing of personal data is carried out by a data processor on behalf of a data controller, the data controller must in order to comply with the seventh principle-

- (a) choose a data processor providing sufficient guarantees in respect of the technical and organisational security measures governing the processing to be carried out; and
- (b) take reasonable steps to ensure compliance with those measures.

12. Where processing of personal data is carried out by a data processor on behalf of a data controller, the data controller is not to be regarded as complying with the seventh principle unless-

- (a) the processing is carried out under a contract-
  - (i) which is made or evidenced in writing; and
  - (ii) under which the data processor is to act only on instructions from the data controller; and
- (b) the contract requires the data processor to comply with obligations equivalent to those imposed on a data controller by the seventh principle.

## Eighth Principle

Personal data shall not be transferred to a country or territory outside the Bailiwick unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

### **INTERPRETATION:**

13. An adequate level of protection is one which is adequate in all the circumstances of the case, having regard in particular to-

- (a) the nature of the personal data;
- (b) the country or territory of origin of the information contained in the data;
- (c) the country or territory of final destination of that information;
- (d) the purposes for which and period during which the data are intended to be processed;
- (e) the law in force in the country or territory in question;
- (f) the international obligations of that country or territory;
- (g) any relevant codes of conduct or other rules which are enforceable in that country or territory (whether generally or by arrangement in particular cases); and
- (h) any security measures taken in respect of the data in that country or territory.

14. The eighth principle does not apply to a transfer falling within any paragraph of Schedule 4, except in such circumstances and to such extent as the Committee may by Order provide.

SCHEDULE 2

CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE:  
PROCESSING OF ANY PERSONAL DATA

1. The data subject has given his consent to the processing.
2. The processing is necessary –
  - (a) for the performance of a contract to which the data subject is a party, or
  - (b) for the taking of steps at the request of the data subject with a view to entering into a contract.
3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
4. The processing is necessary in order to protect the vital interests of the data subject.
5. The processing is necessary –
  - (a) for the administration of justice,
  - (b) for the exercise of any functions conferred on any person by or under any enactment,
  - (c) for the exercise of any functions of the Crown, a Law Officer of the Crown [, a department of the States or a committee of the States of Alderney or the Chief Pleas of Sark], or
  - (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.
6. (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted

in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

(2) The Committee may by Order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.

SCHEDULE 3

CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE:  
PROCESSING OF SENSITIVE PERSONAL DATA

1. The data subject has given his explicit consent to the processing of the personal data.
  
2. (1) The processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment.  
  
(2) The Committee may by Order –
  - (a) exclude the application of sub-paragraph (1) in such cases as may be specified, or
  - (b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.
  
3. The processing is necessary –
  - (a) in order to protect the vital interests of the data subject or another person, in a case where –
    - (i) consent cannot be given by or on behalf of the data subject, or
    - (ii) the data controller cannot reasonably be expected to obtain the consent of the data subject, or
  - (b) in order to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld.
  
4. The processing –
  - (a) is carried out in the course of its legitimate activities by any body or association which –

- (i) is not established or conducted for profit, and
- (ii) exists for political, philosophical, religious or trade-union purposes,
- (b) is carried out with appropriate safeguards for the rights and freedoms of data subjects,
- (c) relates only to individuals who either are members of the body or association or have regular contact with it in connection with its purposes, and
- (d) does not involve disclosure of the personal data to a third party without the consent of the data subject.

5. The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.

6. The processing –

- (a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),
- (b) is necessary for the purpose of obtaining legal advice, or
- (c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

7. (1) The processing is necessary –

- (a) for the administration of justice,
- (b) for the exercise of any functions conferred on any person by or under an enactment, or
- (c) for the exercise of any functions of the Crown, a Law Officer of the Crown [, a department of the States or a committee of the States of Alderney or the Chief Pleas of Sark].

(2) The Committee may by Order –

- (a) exclude the application of sub-paragraph (1) in such cases as may be specified, or

- (b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.

8. (1) The processing is necessary for medical purposes and is undertaken by –

- (a) a health professional, or
- (b) a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a health professional.

(2) In this paragraph "medical purposes" includes the purposes of preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of healthcare services.

9. (1) The processing –

- (a) is of sensitive personal data consisting of information as to racial or ethnic origin,
- (b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained, and
- (c) is carried out with appropriate safeguards for the rights and freedoms of data subjects.

(2) The Committee may by Order specify circumstances in which processing falling within sub-paragraph (1)(a) and (b) is, or is not, to be taken for the purposes of sub-paragraph (1)(c) to be carried out with appropriate safeguards for the rights and freedoms of data subjects.

10. The personal data are processed in circumstances specified in an Order made by the Committee for the purposes of this paragraph.

## Contact the Commissioner

### Enquiries and Publication Requests

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