

Overview

What is the Data Protection Law?

This document provides an overview of the key points of the Data Protection Law and what it means for individuals.

There are a number of leaflets that look at specific issues in greater depth. These are listed towards the end of this document

This guidance relates to both the Data Protection (Jersey) Law 2005 and the Data Protection (Bailiwick of Guernsey) Law, 2001.

Where the Laws differ and to show differences between the two jurisdictions the page will be split as shown below.

Jersey

Commissioner = Information
Commissioner

a = article within the Law

Guernsey

Commissioner = Data Protection
Commissioner

s = section of the Law

Where numbering of passages from the Laws are the same it will be shown as a/s.

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Introduction

The Data Protection Law ('DPL') seeks to strike a balance between the rights of individuals and the sometimes competing interests of those with legitimate reasons for using personal information.

Personal information is information that identifies an individual. It covers both fact and opinion.

The DPL gives individuals (data subjects) certain rights regarding information held about them. It also places obligations on those who process information (data controllers).

Anyone processing personal information must notify the Commissioner that they are doing so, unless their processing is exempt. Notification costs £50.

The eight principles of good practice

Anyone processing personal information must comply with eight enforceable principles of good information handling.

These say that data must be:

1. fairly and lawfully processed
2. processed for limited purposes
3. adequate, relevant and not excessive
4. accurate and up to date
5. not kept for longer than necessary
6. processed in accordance with the individual's rights
7. secure
8. not transferred outside the Islands unless adequate protection is given to it by the receiving organisation/country.

Fair Processing

For information to be considered to be being processed fairly, the individual should be aware of what is happening with their personal

information. There should be no surprises as to what it is being used for, how it will affect decision making and which organisations it may be shared with.

The Six Conditions

At least one of the following conditions must be met for personal information to be considered lawfully processed.

1. the individual has consented to the processing
2. processing is necessary for the performance of a contract with the individual
3. processing is required under a legal obligation (other than by contract)
4. processing is necessary to protect the vital interests of the individual
5. processing is necessary to carry out public functions, e.g. administration of justice
6. processing is necessary in order to pursue the legitimate interests of the data controller or third parties (unless it could unjustifiably prejudice the interests of the individual)

Sensitive Personal Data

Specific provision is made under the DPL for processing of sensitive personal information. This includes racial or ethnic origin, political opinions, religious or other beliefs, trade union membership, physical or mental health condition, sex life, criminal proceedings or convictions.

For sensitive personal data to be considered lawfully processed, at least one of several extra conditions must be met. These are:

- Having the explicit consent of the individual
- Being required by law to process the information for employment purposes
- Needing to process the information in order to protect the vital interests of the individual or another person
- Dealing with the administration or justice or legal proceedings

Rights under the Data Protection Law

Individuals have seven rights under the Data Protection Law.

1. The right of subject access

This allows people to find out what information is held about them on computer and within some manual records.

2. The right to prevent processing

Anyone can ask a data controller not to process information relating to him or her that causes substantial, unwarranted damage or distress to them or anyone else.

3. The right to prevent processing for direct marketing

Anyone can ask a data controller not to process information relating to him or her for direct marketing purposes.

4. Rights in relation to automated decision-taking

Individuals have a right to object to decisions made only by automatic means e.g. there is no human involvement.

5. The right to compensation

An individual can claim compensation from a data controller for damage or distress caused by a breach of the DPL.

6. The right to rectification, blocking, erasure and destruction

Individuals can apply to the court to order a data controller to rectify, block or destroy personal details if they are inaccurate or contain expressions of opinion based on inaccurate information.

7. The right to ask the Commissioner to assess whether the DPL has been contravened

If someone believes their personal information has not been processed in accordance with the DPL, they can ask the Commissioner to make an assessment. If the DPL is found to have been breached and the matter cannot be settled informally, then an enforcement notice may be served on the data controller in question.

Criminal Offences

A number of criminal offences are created by the DPL and include:

Notification offences

This is where processing is being undertaken by a data controller who has not notified the Commissioner either of the processing being undertaken or of any changes that need to be made to the notification.

Procuring and selling offences

It is an offence to knowingly or recklessly obtain, disclose or procure the disclosure of personal information without the consent of the data controller. There are some exceptions to this – for example, where such obtaining or disclosing was necessary for crime prevention/detection. If a person has obtained personal information illegally it is an offence to offer or to sell that personal information.

Helpful hints to prevent unsolicited marketing calls

Unsolicited marketing call should not be made to individual subscribers who have opted out either directly or by registering with the central stop-list, the Telephone Preference Service (TPS), or to corporate subscribers (e.g. companies) who have objected either directly or by registering on the Corporate TPS.

Unsolicited marketing faxes should not be sent to individuals without their prior consent or to any subscriber who has objected, either directly or by registering on the Fax Preference Service (FPS).

Unsolicited marketing emails or SMS should not be sent to an individual subscriber who has not consented unless the email address or phone number was collected in the context of a commercial relationship.

Wholly automated marketing calls, i.e. where a recorded message is played and the recipient does not speak to a human being, can only be made where the subscriber concerned (whether individual or corporate) has consented.

The role of the Commissioner's Office

The Commissioner has specific responsibilities for the promotion and enforcement of the DPL.

Under the DPL, the Commissioner may:

- Serve information notices requiring data controllers to supply the information needed to assess compliance
- Where there has been a breach, serve an enforcement notice (which requires data controllers to take specified steps or to stop taking steps in order to comply with the Law).

Appeals to these notices may be made in Jersey to the Data protection Tribunal or in Guernsey to the Royal Court.

Contact the Commissioner

Enquiries and Publication Requests

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