



# THE OFFICE OF THE **DATA PROTECTION COMMISSIONER**

## The Data Protection (Bailiwick of Guernsey) Law, 2017 ("the **Law**")

### Data Protection Officers

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- Section 47 of the Law makes it a requirement that organisations appoint a data protection officer (DPO) in some circumstances.
  - The Law also contains provisions about the tasks a DPO should carry out and the duties of the employer in respect of the DPO.
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#### **When does a Data Protection Officer need to be appointed under the Law?**

Under the Law, you must appoint a DPO if you:

- are a public authority (except for courts acting in their judicial capacity);
- carry out large-scale systematic monitoring of individuals (for example, online behaviour tracking) as part of your core activity; or
- carry out large scale processing of [special category data](#) as part of your core activity.

Core activity can be considered to be key operations necessary to achieve the controller's or processor's goals. This includes where the processing of personal data forms a vital part of the delivery of that core activity. For example, the core activity of a doctors' practice is to provide healthcare and that cannot be achieved effectively without the use of patients' health records. Therefore, a doctor's practice would need to designate a DPO.

A controller or processor may choose to voluntarily appoint a DPO if the above conditions do not apply.

Regardless of whether the Law obliges you to appoint a DPO, you must ensure that your organisation has sufficient staff and skills to discharge your obligations under the Law.

### **Who can be a DPO?**

The DPO role can be assigned to a dedicated staff member or a staff member with other duties or contracted to an external party.

However the role is fulfilled, the DPO must not undertake any other duties that conflict with their DPO duties.

You may appoint a single data protection officer to act for a group of companies or for a group of public authorities, taking into account their structure and size. In such cases the DPO must be easily accessible from each entity within that group and must be able to allocate an appropriate and proportionate amount of their time to each entity.

### **What are the tasks of the DPO?**

The DPO's minimum tasks are defined in sections 50 and 51:

- To inform and advise the organisation and its employees about their obligations to comply with the Law and other enactments.
- To monitor compliance with the Law, including internal data protection policies, advise on data protection impact assessments; train staff and conduct internal audits.
- To act as the first point of contact for the Office of the Data Protection Commissioner (ODPC) on issues relating to processing.
- To cooperate with the ODPC as necessary.

### **Other duties in relation to DPOs**

- To give written notice to the ODPC of the name and contact details of the DPO.
- To publish a notice confirming the designation of the DPO and contact details and allow individuals to contact the officer directly with regard to data protection issues.
- To involve the DPO in all issues relating to data protection affecting the organisation.

### **How should DPOs be supported?**

You must ensure that:

- The DPO reports to the highest tier of management of your organisation.
- The DPO operates independently and is not dismissed or penalised for performing their task.
- Adequate resources are provided to enable DPOs to meet their legal obligations and maintain their knowledge.
- The DPO should be able to access all personal data and the processing operations of the organisation.
- There should be no conflict of interest in relation to the performance of the DPO's functions.

### **Does the DPO need specific qualifications?**

The Law does not specify the precise credentials a DPO is expected to have. It does require that they should have professional experience and knowledge of data protection law. This should be relevant and proportionate to the type of processing your organisation carries out, taking into consideration the level of protection the personal data requires.

### **Additional guidance available**

The Article 29 Working Party, comprised of representatives of EU data protection authorities under the Data Protection Directive, has published its own guidance on data protection officers that you may find useful. It can be found [here](#). It includes further guidance on what will be deemed a conflict of interests in relation to the DPO's duties with which the ODPC agrees.

## Checklist

### **If you have identified that the Law requires you to have a DPO**

- We have identified who will carry out the role
- We have ensured that the DPO has appropriate skills and resources to fulfil their duties
- We have ensured that the DPO contact details have been reported to the ODPC and are available to individuals
- We have processes in place to ensure the timely involvement of the DPO in matters relating to data protection that arise
- We ensure that the DPO is able to act independently and reports directly to highest tier of management
- We ensure the DPO is well known to all staff and that they have access to staff, data and systems where required