



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

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

### Frequently Asked Questions

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- **What is GDPR?**

The General Data Protection Regulation (GDPR) is European Union legislation which will come into force for European Member States on 25<sup>th</sup> May 2018.

You can find a full copy of the GDPR [here](#).

- **What is the Bailiwick of Guernsey doing?**

The Bailiwick will implement legislation equivalent to the GDPR on 25 May 2018. This will ensure that our citizens have appropriate rights for this digital era and also ensure protection of our 'adequacy' status with the European Commission (protecting the free flow of data to the Islands).

You can find a full copy of the Data Protection (Bailiwick of Guernsey) Law, 2017 (the 2017 Law) [here](#).

- **What are we doing?**

The 2017 Law will require reform of the Office of the Data Protection Commissioner. We are progressing with the reform project which will see us moving to new office premises and recruiting additional staff members. We will also be publishing more information and guidance on our updated website.

- **Is there transitional relief?**

The Data Protection (Commencement, Amendment and Transitional) (Bailiwick of Guernsey) Ordinance, 2018 provides for limited transitional relief. Transitional relief means that for some existing processing additional time is provided to bring it up to the new standards. The key areas that will be afforded transitional relief are –

- Duty to notify pre-collected data (sections 12 & 13)
- Duties of joint controllers (section 33)
- Duty to carry out impact assessment (sections 44 & 45)
- Processor-use duty (section 34)
- Processor duty to establish measures (sections 35 & 36)
- Duty of processor to obtain controller authorisation (section 36)
- Delay of right to data portability (section 14)
- Validity of consents obtained before 25 May 2018
- New registration requirements (sections 39 & 40)

You can find out more about transitional relief [here](#).

- **Who does it affect?**

The 2017 Law applies to the processing of personal data. It places obligations on controllers and processors and provides rights to data subjects.

It does not cover the processing of personal data by an individual for personal, family or household affairs.

- **What is personal data?**

Personal data is any information that relates to a living, identified or identifiable individual.

- **What is the difference between a controller and a processor?**

A controller is responsible for determining the purposes and means of the processing.

A processor processes personal data on behalf of a controller.

- **What about children?**

Children under 13 years of age are recognised in the 2017 Law as requiring a higher level of protection where their data are being processed online. If you are seeking consent in this context, that consent should be given or authorised by a parent (or a person who has parental responsibility).

You can find out about children and consent [here](#).

- **Do I need a Data Protection Officer?**

If you are a public authority you will need to have a data protection officer.

If you are carrying out large-scale and systematic monitoring of data subjects or large scale processing of [special category data](#) as part of your core functions you will need a data protection officer.

You can find out more about data protection officers [here](#).

- **Do I still need to register?**

If you are a controller and are notified under the current legislation, that notification will continue until its expiry date. The 2017 Law will require processors to register and it will also remove some of the exemptions that exist now, requiring more controllers to register. These requirements are subject to transitional relief and will not come into force until 25 May 2019.

You can find out more about notification and registration [here](#).

- **Will Brexit affect data protection in the Bailiwick?**

The data protection regulatory framework or approach for the Bailiwick of Guernsey will not be directly affected by Brexit. After Brexit, the UK will be considered a 'third country' for data protection purposes and will need to ensure adequacy for the purposes of GDPR in the same way as the Bailiwick has done.

The States of Guernsey's website has a page dedicated to Brexit and what it means for the Bailiwick. This page can be found [here](#).

- **How can I prepare?**

The current legislation provides for a robust framework of legal control and protection around the processing of personal data. The 2017 Law builds upon that framework and sets out certain new requirements. Committing to compliance with the current standards will put you in a strong position to make the necessary changes going forward. There are also some practical steps you can take to help prepare [here](#).

- **What are the sanctions?**

There has been much talk of the new and significant fines that can be issued. The maximum fine that can be issued is £10,000,000. Our aim is to ensure controllers and processors in the Bailiwick are provided with the information and tools to deliver on their compliance obligations and fines will either be a last resort or where the breach has been deliberate, wilful, repeated, seriously negligent or having caused significant harm.

- **What are the benefits of compliance?**

We aim to elevate the conversation around data protection compliance beyond a tick box exercise. Good data governance is good for your business, productivity and reputation. Businesses that meet customers' expectations in this digital era will undoubtedly have the edge. The driver for good compliance must go beyond a fear of sanction to enlightened self-interest whereby it is recognised that doing data protection well improves our economic and social well-being as well as opening the door to the future data economy.