

AMENDMENT

Proposed by: Conseiller Reg Guille

Policy and Performance Committee

DATA PROTECTION

In the Proposition –

- a) immediately after "The Data Protection (Bailiwick of Guernsey) Law, 2017" insert ", as amended and approved by the States of Deliberation on 29th November 2017. The amendments are set out below for information, and an electronic copy of the Projet incorporating the amendments is available for viewing on the Chief Pleas website.", and
- b) at the end, insert the following list of amendments –

"Amendments

1. In clause 21 (pp. 33 - 35) of the Projet –
 - (a) in subclause (1) (p. 33), for "a data subject disputes the accuracy or completeness of personal data", substitute "personal data is processed", and
 - (b) in subclause (3) (p. 34), for "inaccuracy or explaining why the personal data is incomplete", substitute "grounds in subsection (1) on which the data subject believes this section applies".
2. In clause 74 (pp. 113 – 118), for subclause 9 (pp. 117 – 118), substitute the following subclause –

"(9) The States of Deliberation may by Ordinance make any provision they think fit to –

- (a) exempt any person from the power of the Authority to order an administrative fine,
- (b) specify a limit to the amount that may be ordered by the Authority by way of an administrative fine against any person, in addition to the limits specified in section 75, or
- (c) otherwise restrict the power of the Authority to order an administrative fine against any person."

3. In clause 108 (pp. 160 - 164) of the Projet, immediately after subclause (5) (p. 163), insert the following subclauses –

"(6) An Ordinance made under this Law ceases to have effect –

- (a) in Alderney if, within the period of four months immediately following the approval date, the States of Alderney resolve to disapprove its application to Alderney, and
- (b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the approval date, the Chief Pleas resolve to disapprove its application to Sark.

(7) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of an Ordinance in accordance with subsection (6), the

Ordinance ceases to have effect in Alderney or (as the case may be) Sark, but without prejudice to –

- (a) anything done under the Ordinance in Alderney or (as the case may be) Sark, or
- (b) the making of a new Ordinance having effect in Alderney or (as the case may be) Sark.

(8) In this section, "**approval date**", in relation to an Ordinance, means the date of its approval by the States of Deliberation."

4. In clause 109 (pp. 164 - 167) of the Projet, immediately after subclause (5) (p. 166), insert the following subclauses –

"(6) Regulations made under this Law cease to have effect –

- (a) in Alderney if, within the period of four months immediately following the relevant date, the States of Alderney resolve to disapprove the application of those regulations to Alderney, and
- (b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the relevant date, the Chief Pleas resolve to disapprove the application of those regulations to Sark.

(7) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of any regulations in accordance with subsection (6), those regulations cease to have effect in Alderney or (as the case may be) Sark, but without prejudice to –

- (a) anything done under those regulations in Alderney or (as the case may be) Sark, or
- (b) the making of new regulations having effect in Alderney or (as the case may be) Sark.

(8) In this section, "**relevant date**", in relation to any regulations, means the date on which those regulations are made by the Committee."

5. In clause 111(1) of the Projet –

- (a) for the definition of "**parental responsibility**" (p. 188) , substitute the following definition –

"parental responsibility" –

- (a) in relation to Guernsey and Alderney, has the meaning given by section 5 of the Children (Guernsey and Alderney) Law, 2008, and
 - (b) in relation to Sark, has the meaning given by section 4 of the Children (Sark) Law, 2016,"
- (b) in paragraph (c)(iii) of the definition of "**police officer**" (pp. 189-191), for "Court of the Seneschal", substitute "Constable", and
 - (c) in the definition of "**safeguard data subject rights**" (p. 197), immediately after "**safeguard data subject rights**", insert "means".

6. In Schedule 1 to the Projet, immediately after paragraph 2 (p. 204), insert the following paragraph –

"3. **Application to the Constable of Sark, etc.**

(1) This Law applies to the Constable and the Vingtenier.

(2) For the purposes of this Law each of –

(a) the Assistant Constable of Sark, and

(b) a special constable appointed by the Constable whilst acting as such, is to be regarded as a servant of the Constable.

(3) In this paragraph, "**the Constable**" means the Constable of Sark."

7. In Schedule 4 to the Projet, in paragraph 2 (p. 213), immediately after "processor", insert "in accordance with any regulations made for this purpose".

Conseiller Charles Maitland

Chairman, Policy and Performance Committee

Explanatory Memorandum

This Amendment makes amendments to the provisions of the draft Projet entitled "The Data Protection (Bailiwick of Guernsey) Law, 2017". The amendments in paragraphs 1, 5(c) and 7, are intended to correct minor errors. The amendment in paragraph 2 is intended to allow further consideration to be given to the scope and extent of any exemptions or limitations to the power of the Authority to order administrative fines. All the other amendments are proposed following representations made on behalf of the Chief Pleas of Sark.

Paragraph 1 of the proposed amendments amends clause 21(1) and (3) of the Projet to clarify that the right to erasure applies in any of the circumstances set out in paragraphs (a) to (f) of clause 21(1), regardless whether or not the data subject disputes the accuracy or completeness of the personal data.

Paragraph 2 of the proposed amendments substitutes clause 74(9) with a new subclause (9) that provides for the States of Deliberation to make provision by Ordinance to exempt specified persons from the power of the Authority to order an administrative fine, to limit the amount of administrative fine that may be ordered against a specified person, or to otherwise restrict the power of the Authority to order such fines against a specified person. This amendment would allow further consideration to be given to the appropriate scope of any exemptions to or limits on administrative fines, as such exemptions and limitations would be prescribed in an Ordinance and not in the Projet itself.

Paragraph 3 of the proposed amendments inserts new subclauses (6) to (8) in clause 108 of the Projet. These new subclauses enable the States of Alderney to disapprove an Ordinance within four months of its approval by the States of Deliberation, and the Chief Pleas of Sark to disapprove an Ordinance at their first or second meeting following its approval by the States of Deliberation. If so disapproved, the Ordinance ceases to have effect in Alderney or (as the case may be) Sark, but without prejudice to anything done under it, or to the making of a new Ordinance, in relation to Alderney or (as the case may be) Sark.

Under the Projet the Committee *for* Home Affairs has powers to make regulations which have effect throughout the Bailiwick. Paragraph 4 of the proposed amendments inserts new subclauses (6) to (8) in clause 109 of the Projet (general provisions as to regulations). As with the amendment to clause 108, these new subclauses enable the States of Alderney to disapprove regulations within four months of the Committee *for* Home Affairs making those regulations, and the Chief Pleas of Sark to disapprove regulations at their first or second meeting following the making of those regulations by the Committee. If so disapproved, those regulations cease to have effect in Alderney or (as the case may be) Sark, but without prejudice to anything done under them, or to the making of new regulations, in relation to Alderney or (as the case may be) Sark.

Paragraph 5 of the proposed amendments amends three definitions in clause 111(1) of the Projet.

The definition of "**parental responsibility**" is amended to reflect the fact that in Guernsey and Alderney, parental responsibility is determined in accordance with the Children (Guernsey and Alderney) Law, 2008, while in Sark, it is determined in accordance with the Children (Sark) Law, 2016.

The definition of "**police officer**" is amended to reflect the fact that in Sark, a special constable is appointed by the Constable and not the Court of the Seneschal.

The definition of "**safeguard data subject rights**" is amended to correct the omission of the word "means".

Paragraph 6 inserts a new paragraph 3 in Schedule 1 to the Projet. This new paragraph makes it clear that the Law applies to both the Constable of Sark and the Vingtenier, and that the Assistant Constable of Sark and any special constable are, for the purposes of the Law, to be regarded as servants of the Constable.

Paragraph 7 amends paragraph 2 of Schedule 4 to the Projet to require the registration of controllers and processors to be carried out in accordance with regulations made by the Committee *for* Home Affairs.