

GUERNSEY STATUTORY INSTRUMENT

2018 No. 20



The Data Protection (International Cooperation and Assistance) (Bailiwick of Guernsey) Regulations, 2018

ARRANGEMENT OF REGULATIONS

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Made , 2018

Coming into operation , 2018

Laid before the States , 2018

THE STATES OF GUERNSEY HOME AFFAIRS COMMITTEE, in exercise of the powers conferred on it by sections 66 and 109 of the Data Protection (Bailiwick of Guernsey) Law, 2017^a and all other powers enabling it in that behalf, following consultation with the Policy and Finance Committee of the States of Alderney, the Policy and Performance Committee of the Chief Pleas of Sark and the former Commissioner, hereby makes the following Regulations:-

Authority to have particular regard to articles 60, 61 and 62 of the GDPR.

1. (1) In performing its functions under section 65 of the Law, the Authority must –

- (a) have particular regard to articles 60, 61 and 62 of the GDPR, and

^a Order in Council No. VI of 2018; as amended by the Data Protection (Commencement, Amendment and Transitional) (Bailiwick of Guernsey) Ordinance, 2018 (Ordinance No. * of 2018) and the Data Protection (General Provisions) (Bailiwick of Guernsey) Regulations, 2018 (G.S.I. No * of 2018).

- (b) so far as appropriate and consistent with its other functions under the Law, act in a manner consistent with those provisions of the GDPR.
- (2) Nothing in paragraph (1) limits the effect of regulations 2 to 4.

Cooperation between the Authority and foreign authorities.

2. (1) On request by a foreign authority, the Authority must –
- (a) give the foreign authority any information requested relating to the Law and the administrative practices of the Authority in respect of the Law,
 - (b) take appropriate steps in accordance with the Law to obtain factual information relating to the processing of personal data carried out in the Bailiwick, excluding the personal data itself, and give that information to the foreign authority.
- (2) The Authority may request the foreign authority of any country to –
- (a) give the Authority any information relating to any law applying in the country concerned relating to the protection of personal data, and the administrative practices of the foreign authority in respect of that law, and
 - (b) take appropriate steps in accordance with that law to obtain and give to the Authority factual information relating to the processing of personal data carried out in

the country concerned, excluding the personal data itself.

Requests for assistance by non-resident individuals.

3. (1) This regulation applies where an individual who is not a Bailiwick resident makes a request to the Authority for assistance to exercise a protected right against a controller established in the Bailiwick.

(2) Where the request indicates that the controller has –

- (a) failed to comply with a request by the individual to exercise the protected right, or
- (b) otherwise breached an operative provision,

the Authority must either –

- (i) give the individual information as to the protected right and the individual's right to make a complaint under section 67 of the Law, together with any register particulars of the controller necessary to enable the individual to make such a complaint, or
- (ii) treat that request as a complaint under section 67 of the Law.

(3) In any other case, the Authority must give the individual –

- (a) if the controller is registered, the controller's address on the register,

- (b) if the controller is not registered, any other principal business address of the controller known to the Authority, and
- (c) any other information the Authority considers necessary for the individual to exercise the protected right.

(4) In this regulation –

"**operative provision**" means any provision of Parts II to X of the Data Protection (Bailiwick of Guernsey) Law, 2017 or Parts II to VIII of the Law Enforcement Ordinance, and

"**register particulars**" has the meaning given by regulation 5(2) of the Data Protection (General Provisions) (Bailiwick of Guernsey) Regulations, 2018.

Requests for assistance by Bailiwick residents.

4. (1) This regulation applies where a Bailiwick resident makes a request to the Authority for assistance to exercise a protected right in a country outside the Bailiwick.

(2) The Authority must send the request to the foreign authority of the country concerned if the Authority is satisfied that the request –

- (a) includes the name, address and any other relevant information identifying the Bailiwick resident,
- (b) sufficiently identifies or describes –

- (i) the personal data to which that request relates,
- (ii) the controller, and
- (iii) the purpose of that request.

(3) If the Authority decides that it is not required to take the action specified in paragraph (2), it must, so far as practicable, notify the Bailiwick resident who made the request of the reasons for the decision –

- (a) as soon as practicable, and
- (b) in any event within 28 days of making that decision.

Restrictions on use of information.

5. (1) This regulation applies to any information received by the Authority from a foreign authority as a result of –

- (a) a request received by the Authority of the kind specified in regulation 2(1), 3(1) or 4(1), or
- (b) a request made by the Authority of the kind specified in regulation 2(2).

(2) The Authority must not use the information for any purpose other than the purpose specified in the request concerned.

Interpretation.

6. (1) In these Regulations, unless the context requires otherwise –

"Bailiwick resident" means an individual who is ordinarily resident in the Bailiwick,

"data subject right" means a data subject right within the meaning of section 111(1) of the Data Protection (Bailiwick of Guernsey) Law, 2017 or section 51(1) of the Law Enforcement Ordinance, or

"enactment" includes –

- (a) an Act of Parliament that extends to the Bailiwick, and
- (b) a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

"foreign authority" –

- (a) means –
 - (i) an authority designated for the purposes of Article 13 of the Convention, or
 - (ii) a competent supervisory authority within the meaning of section 111(1) of the Law, including, for the avoidance of doubt, a supervisory authority within the meaning of Article 4(21) of the GDPR, but
- (b) excludes the Authority,

"the former Commissioner" means the Data Protection Commissioner under the Data Protection (Bailiwick of Guernsey) Law, 2001^b,

"the Law" –

- (a) means the Data Protection (Bailiwick of Guernsey) Law, 2017, and
- (b) includes any Ordinance or regulations made under that Law (including these Regulations),

"the Law Enforcement Ordinance" means the Data Protection (Law Enforcement and Related Matters) (Bailiwick of Guernsey) Ordinance, 2018^c,

"protected right" means –

- (a) a right under Article 8 of the Convention,
- (b) a data subject right, or
- (c) a right conferred by the GDPR or required to be conferred by the Law Enforcement Directive, and

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance.

^b Order in Council No. V of 2002; as amended by Ordinance No. XXXIII of 2003; No. II of 2010; No. XXXIV of 2011; No. XLIX of 2012; No. XXIX of 2013; and No. IX of 2016.

^c Ordinance No. * of 2018.

(2) The Interpretation (Guernsey) Law, 1948^d applies to the interpretation of these Regulations throughout the Bailiwick.

(3) Any reference in these Regulations to an enactment or a Community provision or is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation.

7. These Regulations may be cited as the Data Protection (International Cooperation and Assistance) (Bailiwick of Guernsey) Regulations, 2018.

Commencement.

8. These Regulations come into force on the 25th May, 2018.

Dated this 18th day of May, 2018



Deputy Mary Lowe

President of the Committee for Home Affairs

For and on behalf of the Committee

^d Ordres en Conseil Vol. XIII, p. 355.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Data Protection (Bailiwick of Guernsey) Law, 2017 ("**the Law**"). These Regulations confer additional functions on the Authority in relation to international co-operation and international mutual assistance, in connection with the GDPR and the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981).

Regulation 1 requires the Authority to have particular regard to articles 60 (cooperation between the lead supervisory authority and the other supervisory authorities concerned), 61 (mutual assistance) and 62 (joint operations of supervisory authorities) of the GDPR when performing its functions under section 65 of the Data Protection Law. So far as appropriate and consistent with its other functions under the Law, the Authority is required to act in a manner consistent with those provisions of the GDPR.

Regulation 2 requires the Authority, on request by a foreign supervisory authority, to provide that foreign supervisory authority with information on the Law and the Authority's administrative practices, as well as to take steps to obtain factual information relating to any processing of personal data carried out in the Bailiwick. The Authority is authorised to make a similar request to a foreign supervisory authority.

Regulation 3 requires the Authority, on request by an individual who is not a Bailiwick resident, to assist the individual to exercise a right protected by the Convention or a data subject right under the Law against a controller established in the Bailiwick.

Regulation 4 requires the Authority, on request by a Bailiwick resident, to assist that resident to exercise, in a country outside the Bailiwick, a right protected by the

Convention, a data subject right under the Law or a right conferred by the GDPR or required to be conferred by the Law Enforcement Directive. In this case, the Authority is required to submit the request to the supervisory authority of the country concerned.

Regulation 5 prohibits the Authority from using any information provided by a foreign supervisory authority as a result of a request made by or to the Authority under these Regulations for any purpose other than the purpose specified in the request.

Regulation 6 sets out the interpretation provisions. Regulations 7 and 8 are the citation and commencement provisions, respectively.

These Regulations come into force on the 25th May, 2018.

