

General Data Protection Regulation – table of equivalence - 5 December 2017

Draft Data Protection (Jersey) Law 201- and Data Protection Authority (Jersey) Law 201- / Data Protection (Bailiwick of Guernsey) Law 201-

| General Data Protection Regulation Article | Data Protection (Jersey) Law 2017 – Article(s) | Data Protection (Jersey) Authority 2017 Law – Article(s) | Data Protection (Bailiwick of Guernsey) Law – Clause(s) | Comments |
|--|--|--|---|--|
| 1. Subject matter and objectives | Long title | | 1 | |
| 2. Material scope | 1 - definition “data” and 4(1) and (5) | | 2, 4 | Jersey definition of data captures unstructured data held by public authorities to enable the DP Law to interface with the Freedom of Information (J) Law 2011. Guernsey Law does not reflect 2.3 GDPR as does not implement Law Enforcement Directive though that may be remedied by ordinance under 103) |
| 3. Territorial scope | 4 (2) to (4) | | 2, 111 (definition of “ <i>established in the Bailiwick</i> ”). | Jersey and Guernsey take similar approaches, both continue to capture all processing using equipment in Jersey. |
| 4. Definitions | 1-3, 11 | | 110, 111, Schedule 9 | Jersey definitions closely follow the GDPR. Guernsey Law introduces a number of additional defined terms not found in GDPR. |
| 5. Principles relating to processing of data | 6(1)(a), 8 | | 6 | |
| 6. Lawfulness of processing | 8(1)(a), 9 and Schedule 2 (Art 6.4 GDPR = 13) | | 6(1) and (2), 7 and Schedule 2 (Art 6.4 GDPR = 9 and proportionality factors in para 4 of Schedule 9) | Re 6.4 GDPR - Jersey and Guernsey Laws take different approaches. Jersey law closely follows the GDPR. Guernsey Law is different, 9(3) <i>deems</i> all processing required by statute as compatible with the original purpose of processing. |
| 7. Conditions for consent | 11 | | 10 | Jersey and Guernsey approaches are similar, incorporating elements of the GDPR recitals into the Law. |

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| 8. Conditions applicable to child's consent in relation to information society services | 11 (3)(f) and (4) | | 10(3)(f) and (6) | |
| 9. Processing of special categories of data | 8(1)(a), 9 and Schedule 2 | | 6(1) and (2), 7, 110, 111 and Schedules 2 and 9 | |
| 10. Processing of personal data relating to criminal convictions and offences | 1 – definition of “special category data” | | 111 (definitions of “special category data” and “criminal data”) | Both the Jersey and Guernsey Law include information relating to a person's criminal record or activity as special category data. |
| 11. Processing which does not require identification | 5 | | 11 | Jersey and Guernsey Laws take different approaches. Jersey closely follows the GDPR, but omits unclear requirement in GDPR 11.2 to inform an unidentifiable data subject they are unidentifiable, “ <i>if possible</i> ”. Guernsey Law introduces novel definition of anonymisation and requires the data controller to take reasonable steps to inform data subjects that their data is anonymised with potential fine for failure. |
| 12. Transparency information, communication and modalities for the exercise of the rights of the data subject | 12(4), 27(1)-(7) | | 25, 26, 27, 28, 29, 30, Schedule 3 | Jersey and Guernsey Law take similar approaches, though Guernsey Law takes a different approach to the way the provisions are drafted and order they appear to the GDPR. |
| 13. Information to be provided where personal data are collected from data subject | 12 | | 12 and Schedule 3 | |
| 14. Information to be provided where personal data have not been collected from data subject | 12 | | 13, 110, 111 and Schedule 9 | |
| 15. Right of access by the data subject | 28 (subject to 29 and 30) | | 15, 16 and Schedule 3 (possibly further exemptions to be added by ordinance) | Jersey Law includes special provision in relation to right of access requests for health records. |

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| 16. Right to rectification | 31 | | 20 | |
| 17. Right to erasure ('right to be forgotten') | 32 | | 21 | |
| 18. Right to restriction of processing | 33 | | 22, 111 | |
| 19. Notification obligation regarding rectification or erasure of personal data or restriction of processing | 27(8) | | 23 | |
| 20. Right to data portability | 34 | | 14 and 16 | Jersey and Guernsey take different approaches to exemptions from this right. Jersey closely follows GDPR. Clause 16 Guernsey Law imposes additional requirements on controllers to check with third parties before porting data. |
| 21. Right to object | 35, 36 and 37 | | 17, 18 and 19 | Similar approaches in Jersey and Guernsey, but in Guernsey an objection to processing on grounds of <i>legitimate</i> interests cannot be overridden by demonstrating compelling <i>legitimate</i> interest. |
| 22. Automated individual decision-making, including profiling | 38 | | 24, 111 | Jersey and Guernsey take different approaches. Jersey Law closely follows GDPR, Guernsey Law defines automatic decision so that this right only applies to decisions based on information relating to the data subject and where it affects subject's significant interests as defined in 111. This may exclude profiling, including by law enforcement bodies from this data subject right. |
| 23. Restrictions | Part 7 | | Article 96 and Schedule 8 | |
| 24. Responsibility of the controller | 14(1), (2) and (5) | | 31, 111 | |

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| 25. Data protection by design and by default | 15 | | 32 | |
| 26. Joint controllers | 7 | | 33 | |
| 27. Representatives of controllers or processors not established in the Union | 4(3) - but only required to appoint a rep where a data controller established outside Jersey and has equipment in Jersey processing data. | | 38 (read with 111), provides that where a controller is established in the Bailiwick, but is not a "Guernsey person", "Alderney person" or "Sark person", then must designate such a person as a rep and authorise rep to receive communications. | Guernsey law provision is entirely novel, requires any Jersey, UK or EU registered company that is established in the Bailiwick (e.g. one maintaining an office there) to appoint a "Guernsey person", "Alderney person" or "Sark person" as its representative. Jersey has not included an equivalent provision, but has made limited provision like that in the 2005 Law. |
| 28. Processor | 19 | | 34, 35, 36 | |
| 29. Processing under the authority of the controller or processor | 23(1)-(2) | | 35 | |
| 30. Records of processing activities | 14(3) and 23(3) - Article 6(3) | | 37 | The Jersey Law closely follows the GDPR. The Guernsey Law takes an ordinance making power to impose record keeping obligations and obligations to provide returns. |
| 31. Cooperation with the supervisory authority | 6(1)(i) & 22(1)(j) | | 37 | |
| 32. Security of processing | 21 | | 41 | |
| 33. Notification of a personal data breach to the supervisory authority | 20(1) to (5), 22(1)(g) | | 42, 110, 111 and Schedule 9 | Jersey and Guernsey approaches differ. Jersey closely follows the GDPR. Guernsey imposes stricter requirement to notify personal data breach to Authority "as soon as practicable". Guernsey Law requires that notification of breach be given to Authority in wider range of circumstances, wherever there is any risk to the <i>significant interests</i> of data subjects. |

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| 34. Communication of a personal data breach to the data subject | 20(6) to (8) | | 43, 110, 111 and Schedule 9 | Jersey and Guernsey approaches differ. Jersey closely follows the GDPR. Guernsey imposes wider requirement to notify data subjects of data breach wherever there is a high risk to the <i>significant interests</i> of data subjects. |
| 35. Data protection impact assessment and prior consultation | 16 | | 44, 110, 111 and Schedule 9 | Jersey and Guernsey approaches differ. Jersey closely follows the GDPR. Guernsey imposes a wider requirement to carry out an impact assessment wherever there is a high risk to the <i>significant interests</i> of data subjects (44(8)). However, the reference to significant interests of “ <i>data subjects</i> ” may also narrow the provision. A DPIA may not be required in respect of new processing involving individuals who are not identifiable as data subjects (see GDPR 35 and Jersey law for comparison). |
| 36. Prior consultation | 17 and 18 | | 45 and 46 | |
| 37. Designation of the data protection officer | 24 | | 47, 48 and 49 | |
| 38. Position of the data protection officer | 25 | | 51 | |
| 39. Tasks of the data protection officer | 26 | | 50 | |
| 40. Codes of conduct | 78 | | 52 | |
| 41. Monitoring of approved codes of conduct | 79 | | 53 | |
| 42. Certification | 80 | | 54 | |
| 43. Certification bodies | 80 | | 54 | |

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| 44. General principle for transfers | 66 and Schedule 3 | | 55, 111 | |
| 45. Transfers on the basis of an adequacy decision | 67 | | 55 | |
| 46. Transfers subject to appropriate safeguards | 67 | | 56 | |
| 47. Binding corporate rules | 67 and Schedule 4 | | 58 | |
| 48. Transfers or disclosures not authorised by the EU | 66 and Schedule 3 | | 59 | |
| 49. Derogation for specific situations | 66 and Schedule 3 | | 59 | |
| 50. International cooperation for the protection of personal data | | 15 and 16 | 65 and 66 | |
| 51. Supervisory authority | | 2 | 60 | |
| 52. Independence | | 7, 12 | 62 | |
| 53. General conditions for the members of the supervisory authority | | 3-5 | 60 and Schedule 6 | |
| 54. Rules on the establishment of the supervisory authority | | 2-3 | 60 and Schedule 6 | |
| 55. Competence | | 11 | 61 | |
| 56. Competence of the lead supervisory authority | | | | N/A |
| 57. Tasks | | 11 | 61 | |
| 58. Powers | | 13-14, 20 to 30 and Schedule 1 | 63, 64, 67 to 77 and Schedule 7 | |
| 59. Activity reports | | 43 and 44 | 60, paras 12 and 13 of Schedule 6 | |

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| 60. Cooperation between the lead supervisory authority and the other supervisory authorities concerned | | | | N/A |
| 61. Mutual assistance | | | | N/A |
| 62. Joint operations of supervisory authorities | | | | N/A |
| 63. Consistency mechanism | | | | N/A |
| 64. Opinion of the Board | | | | N/A |
| 65. Dispute resolution by the Board | | | | N/A |
| 66. Urgency procedure | | | | N/A |
| 67. Exchange of information | | | | N/A |
| 68. European Data Protection Board | | | | N/A |
| 69. Independence | | | | N/A |
| 70. Tasks of the Board | | | | N/A |
| 71. Reports | | | | N/A |
| 72. Procedure | | | | N/A |
| 73. Chair | | | | N/A |
| 74. Tasks of the Chair | | | | N/A |
| 75. Secretariat | | | | N/A |

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| 76. Confidentiality | | | | N/A |
| 77. Right to lodge a complaint with a supervisory authority | | 19 | 67 | |
| 78. Right to an effective judicial remedy against a supervisory authority | | 31 and 32 | 82 and 83 | |
| 79. Right to an effective judicial remedy against a controller or processor | 68 | | 79 | |
| 80. Representation of data subjects | 70 | | 97 | |
| 81. Suspension of proceedings | | | | N/A |
| 82. Right to compensation and liability | 69 | | 79 | |
| 83. General conditions for imposing administrative fines | | 26-27 | 74 | Jersey and Guernsey approaches similar, but some differences. Jersey Law includes £10,000 fine cap where the controller is processing in the public interest and not for profit. Guernsey Law makes reference in para 12 of Schedule 6 to funding the Authority, indirectly, from fine income. |
| 84. Penalties | 71 to 76 | 17(6), 25(8) | 87 to 95 | |
| 85. Processing and freedom of expression and information | 44 | | 96, 111, para 17 of Schedule 8 | |
| 86. Processing and public access to official documents | 51 | | Para 12 Schedule 8 | |
| 87. Processing of the national identification number | 85 | | 105 | |
| 88. Processing in the context of employment | 85 | | 105 | |
| 89. Safeguards and derogations relating to processing for | 65, 85 and para 17 - Schedule 2 | | 106 | |

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| archiving purposes in the public interest, scientific or historical research purposes or statistical purposes | | | | |
| 90. Obligations of secrecy | | 8 | 91 | |
| 91. Existing data protection rules of churches and religious associations | | | | N/A |
| 92. Exercise of the delegation | | | | N/A |
| 93. Committee procedure | | | | N/A |
| 94. Repeal of Direction 95/46/EC | | | | N/A |
| 95. Relationship with Directive 2002/58/EC | | | | N/A |
| 96. Relationship with previous concluded Agreements | | | | N/A |
| 97. Commission reports | | | | N/A |
| 98. Review of other Union legal acts on data protection | | | | N/A |
| 99. Entry onto force and application | 88 | 49 | 115 | Jersey Law makes provision with respect to timing of commencement and with regard to savings and transitional provisions in Schedule 5. Guernsey provisions to be confirmed. |

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