

STATES OF JERSEY



DATA PROTECTION COMMISSIONER: APPOINTMENT

Lodged au Greffe on 1st November 2006
by the Minister for Treasury and Resources

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to appoint Mrs. Emma Martins as Data Protection Commissioner for Jersey in accordance with the provisions of Article 6(1) of, and Part 1 of Schedule 5 to, the Data Protection (Jersey) Law 2005, on the terms set out in the Appendix to the report of the Minister for Treasury and Resources dated 1st November 2006.

MINISTER FOR TREASURY AND RESOURCES

REPORT

Introduction

- 1.1 Schedule 5 of the Data Protection (Jersey) Law 2005 provides that the terms and conditions of the appointment of the Data Protection Commissioner are determined by the States at the time of the appointment.

Background

- 2.1 Mrs. Martins was appointed as Data Protection Registrar on 1st April 2004, being promoted from her role as Deputy Data Protection Registrar. A report and proposition was lodged au Greffe on 10th February 2004 by the Finance and Economics Committee, stating “***THE STATES are asked to decide whether they are of opinion*** – in accordance with paragraph 1(1) of the Second Schedule to the Data Protection (Jersey) Law 1987, to appoint Mrs. Emma Martins to the post of Data Protection Registrar with effect from 1st April 2004.”
- 2.2 Paragraph (2) of Article 6 of the Data Protection (Jersey) Law 2005, which came into force on 1st December 2005, provides that the States may from time to time appoint a person to the office of Data Protection Commissioner, but until the first such appointment takes effect, the person holding office as Data Protection Registrar immediately before the Article comes into force shall hold office after then as Commissioner on the terms and conditions applying immediately before then.
- 2.3 Schedule 5 of the 2005 Law provides that the terms and conditions of appointment to the office of Commissioner shall be consistent with the Law **and determined by the States at the time of appointment.**

Recommendation

- 3.1 The States are now invited to formally appoint Mrs. Martins as Commissioner in accordance with the provisions of the 2005 Law and to determine the terms and conditions of her appointment when the appointment is made, as provided for in paragraph 1(2) of Schedule 5 of the 2005 Law.
- 3.2 The proposed terms and conditions for Mrs. Martin's appointment as Data Protection Commissioner are set out in the attached Appendix to this Report. The terms and conditions have been considered by the States Employment Board and are presented to the States with the support of that Board.

1st November 2006

Mrs. Emma Martins

TERMS OF APPOINTMENT

1. The Appointee is engaged as **Data Protection Commissioner**. Pursuant to paragraph 2(5) of Schedule 5 the terms and conditions of the Appointee shall not be construed so as to create a contract of employment or agency between the States (or the Minister) and the Appointee.
2. The Appointment is for a period of 5 years except where it is terminated by either the States of Jersey or the Appointee. No later than 4½ years from the date of formal appointment (i.e. no later than 6 months prior to a period of 5 years being completed) a decision will be taken by the States as to whether the appointment is to be renewed and on what terms.
3. It is expected that the Appointee will work such hours as are necessary to fulfil the role properly. The minimum hours of work for this appointment are 37 hours per week. The Appointee shall reside in Jersey and shall not, either directly or indirectly, engage or be concerned in any other service or business whatsoever, or receive commission or profits of any kind.
4. The Appointee shall be entitled to remuneration equivalent to Civil Service Pay Grade 15/3 as from 1st December 2005, the commencement date of the Data Protection (Jersey) Law 2005. Remuneration shall be reviewed at annual intervals subject to any general pay awards agreed for the Civil Service pay group, effective from 1st June of each year. Any payments made in error to the Appointee will be deducted from the Appointee's remuneration after due notice is given. Consideration will be given to the amount and timing of these repayments after consultation with the Appointee. The post is pensionable and the Appointee is eligible to remain in the Public Employees Contributory Retirement Scheme (PECRS).
5. Termination of the appointment is by written notice, by either party. Any decision to terminate the appointment on behalf of the States of Jersey would be made by the States and a minimum period of 6 months' notice would be given. For the avoidance of doubt, the Appointee shall not be entitled to compensation in the event of termination or non-renewal. Should the Appointee wish to terminate the appointment then she should give 4 months' notice of that intention.
6. The States of Jersey shall indemnify (and hold harmless) the Appointee in respect of any claim arising in the course of her duties, save in the case of criminal wrongdoing, fraud or gross negligence.
7. The Appointee's entitlement to paid time off for annual leave, study leave and maternity leave will be in line with terms and conditions agreed with the Director of Human Resources. In addition to the Terms and Conditions of Appointment as detailed above, the Appointee will, where appropriate, enjoy the same conditions of service as if she were employed as a Civil Servant at Grade 15/3. Any amendment may be agreed between the Appointee and the Director of Human Resources provided that such changes do not constitute a material departure from existing terms and conditions. A Memorandum of Understanding ("MoU") will be entered into to address practical issues e.g. lines of communication, budgetary matters. The MoU will not form part of the terms and conditions of this appointment and may be amended from time to time.