

STATES OF JERSEY



DRAFT DATA PROTECTION (FAIR PROCESSING) (JERSEY) REGULATIONS 200

**Lodged au Greffe on 6th September 2005
by the Finance and Economics Committee**

STATES GREFFE



Jersey

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REPORT

The first principle requires that data controllers provide data subjects with full details of the intended processing. If that data is received directly from the data subject, that can be done at the time of collection. If it is received from a third party, the data controller must take steps to notify the data subject of the processing details within a specified time. This requirement is dis-applied if the provision of such information involves 'disproportionate effort' on the part of the data controller. This Regulation sets out further conditions for any data controller wishing to claim disproportionate effort.

Any resource implications of these Regulations are already provided for within the resources of the Finance and Economics Committee.

Explanatory Note

Under paragraph 2 of Schedule 1 Part 2 to the Data Protection (Jersey) Law 2005, personal data are not to be treated as processed fairly unless the data controller provides the data subject with information about the processing.

Under paragraph 3 of Schedule 1 Part 2, the data controller may disregard those requirements in respect of data obtained from a source other than the data subject if –

- (a) providing the information would involve disproportionate effort or processing the information is done because of a non-contractual legal obligation; and
- (b) any further conditions prescribed by Regulations are met.

These Regulations prescribe as further conditions –

- (a) that the data subject has not given notice requiring information about data processing concerning him or her; or
- (b) if such notice has been given, but the data controller cannot provide the information, that the data controller has given notice to the data subject of that inability and the reasons for it.

In addition, if the reason for refusing the information is that to provide it would involve disproportionate effort, another further condition is that the data controller keeps a record of the reasons for the data controller's view to that effect.

The further conditions *do not apply* if the processing is done under a function conferred by an enactment or done in order to comply with an order of a court.

These Regulations contribute to the implementation of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.



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Arrangement

Regulation

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Jersey

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Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of paragraph 3(1) of Schedule 1 Part 2, and Article 67, of the Data Protection (Jersey) Law 2005, ^[1] have made the following Regulations –

1 Interpretation

In these Regulations, “Law” means the Data Protection (Jersey) Law 2005.

2 Where further conditions apply: paragraph 3(1) of Schedule 1 Part 2

- (1) In a case where the primary condition referred to in paragraph 3(2)(a) of Schedule 1 Part 2 to the Law is met, the further conditions that are to be met are the conditions set out in Regulations 3, 4 and 5.
- (2) In a case where the primary condition referred to in paragraph 3(2)(b) of Schedule 1 Part 2 to the Law is met because the recording of the information to be contained in the data by, or the disclosure of the data by, the data controller is necessary for compliance with a legal obligation imposed on the data controller otherwise than –
 - (a) because of a function conferred on the data controller by or under any enactment; or
 - (b) by order of a court,the further conditions that are to be met are the condition set out in Regulations 3 and 4.

3 Further condition: no notice from individual, or insufficient information to answer notice

A further condition is that –

- (a) no notice in writing has been received at any time by the data controller from an individual requiring the data controller to provide the specified information before the relevant time or as soon as practicable after that time; or
- (b) if such notice in writing has been received, but the data controller does not have sufficient information about the individual in order readily to determine whether the data controller is processing personal data about that individual, the data controller has sent to the individual a notice in writing stating that the data controller cannot provide the specified information because of the inability to make that determination, and explaining the reasons for that inability.

4 Meaning of notice in writing in Regulation 3

For the purposes of Regulation 3, notice is taken to be no less in writing just because the notice is

transmitted by electronic means, if the notice is received in legible form and is capable of being used for subsequent reference.

5 Further condition: record of reasons why effort disproportionate

A further condition is that the data controller shall –

- (a) record the reasons for his or her view that the primary condition referred to in paragraph 3(2)(a) of Schedule 1 Part 2 to the Law is met in respect of the data; and
- (b) keep that record while the data controller holds the data.

6 Citation and commencement

These Regulations may be cited as the Data Protection (Fair Processing) (Jersey) Regulations 200- and shall come into force on 1st November 2005.

[\[1\]](#) L.2/2005.