

STATES OF JERSEY



Jersey

DRAFT DATA PROTECTION (AMENDMENT OF LAW) (JERSEY) REGULATIONS 202-

**Lodged au Greffe on 25th September 2020
by the Minister for Economic Development, Tourism, Sport and Culture**

STATES GREFFE

REPORT

The [Data Protection \(Jersey\) Law 2018](#) and the [Data Protection Authority \(Jersey\) Law 2018](#) came into effect on 25th May 2018. This legislation strengthened data protection for islanders including establishing the Jersey Data Protection Authority. This legislative framework offers essentially equivalent protection to the EU's General Data Protection Regulation and is designed to assist Jersey in retaining its 'adequacy' decision from the EU commission and maintain the free flow of data to and from the Island from residents of EU member states. In line with the requirements of the General Data Protection Regulation, the legislation also significantly expanded the powers, scope and responsibilities of the Authority, leading to a corresponding increase in the resources and skills needed for it to fulfil its role.

Jersey's status as an adequate jurisdiction means that operators in Jersey and EEA member states do not need to seek authorisation from a supervisor before a data transfer takes place or put in place additional safeguards to protect the data. Jersey operators can also free-flow data with operators in other adequate third countries.

The UK is Jersey's largest trading partner. In the course of normal business, personal data is shared between Jersey and UK operators. As a jurisdiction outside the European Economic Area (a "third country"), Jersey organisations have, since 2008, been able to rely on an EU adequacy decision to allow for the free flow of data with the UK and other EEA Member States.

In preparation for Brexit the Council of Ministers previously agreed to amend the Data Protection (Jersey) Law 2018 to permit the continued free flow of data to the UK once the UK left the EU for a finite period. This transitional amendment expires in December 2020.

When the UK left the EU on 31st January 2020, it became a third country without an adequacy decision. The Withdrawal Agreement allows EEA states and adequate jurisdictions to free-flow data with the UK during the transition period, which expires on 1st January 2021.

It is necessary to prepare for a potential scenario in which the UK does not receive an adequacy decision by 1st January 2021. This further amendment to the Data Protection (Jersey) Law 2018 would secure the continued free flow of data with the UK until December 2021 and offer important continuity in a period of uncertainty.

If no action is taken by the Government of Jersey to extend the existing amendment, it will be challenging for Jersey operators to continue to lawfully exchange data between Jersey and the UK. As we understand it, the UK intends to unilaterally recognise EU adequacy designations, and if this happens, it should be possible for a UK entity to share data with Jersey (for as long as Jersey retains its own adequacy decision), however, it is not clear on what basis Jersey operators could reciprocate.

Financial and manpower implications

There are no manpower implications to the Government of Jersey.

EXPLANATORY NOTE

These Regulations, if passed, will amend Article 1(3A) of the Data Protection (Jersey) Law 2018 so that the United Kingdom is to be treated as not being a third country for the purposes of the Law until the end of 2021 (instead of 2020).



Jersey

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Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES make these Regulations under Article 1 of the Data Protection (Jersey) Law 2018¹ –

1 Amendment of the Data Protection (Jersey) Law 2018

In Article 1(3A) of the Data Protection (Jersey) Law 2018² (interpretation) for “2020” there is substituted “2021”.

2 Citation and commencement

These Regulations may be cited as the Data Protection (Amendment of Law) (Jersey) Regulations 202- and come into force 7 days after they are made.

ENDNOTES

Table of Endnote References

1	<i>chapter 15.240</i>
2	<i>chapter 15.240</i>