

STATES OF JERSEY



Jersey

DRAFT DATA PROTECTION (REGISTRATION AND CHARGES) (AMENDMENT) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 22nd October 2019
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](#) (“the Authority Law”) came into effect on 25th May 2018. This legislation strengthened data protection for Islanders, including establishing the Jersey Data Protection Authority (“the Authority”) and ensured that Jersey was able to maintain EU ‘adequacy’ status, which is required to preserve the free flow of data with Europe. In line with the requirements of the General Data Protection Regulation, the legislation 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.

Historically, the data protection regulator was funded partly by Government and partly by a flat fee levied on all registered businesses, regardless of the type or amount of personal data they process, their size, or their ability to pay.

The report submitted with the [Draft Data Protection Authority \(Jersey\) Law 201-](#) noted that the Government would be meeting the additional costs of the Authority during a transitional period that would expire in 2019, after which a risk-based, tiered administrative charge would be introduced, to enable it to raise enough revenue to meet its expanded costs in a fair and transparent way without increasing the burden on taxpayers.

In developing its proposed changes to data protection fees, the Authority consulted widely with the business community. Following completion of this engagement work and a 6-week public consultation, fees for small and medium businesses were reduced, and new exemptions were introduced for those acting in the public interest, including States Members, public authorities, charities, and those who are legally required to retain records after ceasing to conduct business. The proposed new funding model is essential in supporting the resourcing of the Authority and is designed to fulfil the following criteria:

- Compliant – with GDPR, which precludes indiscriminate notification processes.
- Risk-based – takes into account the nature of data and the associated risk in terms of impact on data subjects and the probability of data breaches.
- Fair – the impact of fees is appropriately distributed, with the burden on SMEs minimised as far as practical.
- Understandable – feepayers are able to understand the amount they are expected to pay and how the amount has been calculated.
- Simple and inexpensive to administer – the process of determining fees is straightforward both for the data protection regulator and for businesses. It is automated with minimal administration resources required from the data protection regulator.
- No further public costs – businesses that are the beneficiaries of data protection regulation should meet the increased costs of the regulator, not by the taxpayer.
- Supports businesses to understand their obligations – the act of having to pay a charge reinforces businesses obligations under the Law, and ensures that they have access to JOIC’s toolkits that are designed to help businesses to comply.

It is anticipated that the substantial majority of data controllers and data processors will pay £70 under this proposed new model. Those data controllers and data processors that are deemed to carry a higher risk by virtue of the amount and type of personal data they are processing, including the number of employees, whether they have obligations under the [Proceeds of Crime \(Jersey\) Law 1999](#), and if they process special category data, will pay a higher fee. The maximum fee any data controller or data processor will pay is £1,600, and it is estimated that less than 0.1% of data controllers/ data processors will fall into this category.

Financial and manpower implications

There are no additional costs or manpower implications for the Government arising from the adoption of these draft Regulations. The Government currently provides a funding for the Authority of £0.5 million and this will continue. If adopted, the fees are expected to enable the Authority to meet an income requirement of £1.1 million.

EXPLANATORY NOTE

These Regulations will, if passed, amend the Data Protection (Registration and Charges) (Jersey) Regulations 2018 to vary the charging provisions.

Regulation 1 defines “2018 Regulations” to mean those Regulations.

Regulation 2 inserts some additional definitions and removes a redundant definition.

Regulation 3 removes some now redundant provisions relating to the period when the new data protection legislation was first in force.

Regulation 4 replaces Regulation 6 of the 2018 Regulations with new Regulations 6 to 6C.

Regulation 6 as inserted imposes a requirement on every registered controller and registered processor (known as the “payer”) to pay an annual charge for each year or part year of registration and provides for when that charge becomes due. It also continues to provide for exemptions as set out in the Schedule and where the only additional disclosure is required by law or permitted by Article 64 of the Data Protection (Jersey) Law 2018 (permitted processing for law enforcement, legal proceedings and public records purposes).

Regulation 6A sets out the basis on which the annual charge is calculated. There is a base amount, based on the number of full-time equivalent employees set out in paragraph (2), and additional amounts that apply in the circumstances set out in the subsequent paragraphs, again related to the number of full-time equivalent employees. The Regulation also sets out the means of calculating the employees and there is provision for the Data Protection Authority to give guidance.

Regulation 6B provides that where the payer is administered by a trust company business or a fund services business the annual charge is to be £50.

Regulation 6C requires the payer to provide information as set out in the Regulation to substantiate the amount of the payment is correct.

Regulation 5 amends Regulation 7 of the 2018 Regulations by adding a power to remove an entry in the data protection register where insufficient information is provided as required by Regulation 6C, or where the information provided is false, misleading or incomplete.

Regulation 6 amends the Schedule to replace the exemption for staff administration with exemptions for public authorities, candidates for election and provided schools. The exemption for accounts and records is now limited to where a business has ceased.

Regulation 7 is a transitional provision to prevent double charging where a charge has already been paid for a portion of the first year to which the amended Regulations apply.

Regulation 8 is the citation and commencement provision.



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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES make these Regulations under Articles 18 and 46 of the Data Protection Authority (Jersey) Law 2018¹ –

1 Interpretation

In these Regulations, “2018 Regulations” means the Data Protection (Registration and Charges) (Jersey) Regulations 2018².

2 Regulation 1 (interpretation) amended

In Regulation 1 of the 2018 Regulations –

- (a) after the definition “Law” there is inserted –
 - “ “payer” means a registered controller or registered processor who is required to pay an annual charge under Regulation 6;
 - “past-year revenues” means a payer’s gross revenues that are generated by or on behalf of that part of the payer’s business that is established in Jersey for the year before the year to which an annual charge relates;”;
- (b) the definition “staff” is deleted;
- (c) after the definition “registration period” there is inserted –
 - “ “year” means a calendar year.”.

3 Regulation 4 amended, Regulation 5 deleted

Regulations 4(2) and 5 of the 2018 Regulations are deleted.

4 Regulation 6 (requirement to pay annual charge) amended

For Regulation 6 of the 2018 Regulations there is substituted –

“6 Requirement to pay annual charge

- (1) Every registered controller and registered processor must pay an annual charge to the Authority for each calendar year or part of a calendar year in which the controller or processor is registered, the amount of which is to be calculated in accordance with Regulations 6A and 6B.
- (2) An annual charge falls due on 1st January of the year to which the charge relates and must be paid by the last day of the following month.
- (3) However, if the controller or processor becomes registered during the course of a year the annual charge falls due one month after registration.
- (4) A registered controller or registered processor is exempt from paying the annual charge if –
 - (a) the only processing carried out by the controller or processor falls within any of the classes of processing set out in the Schedule; and
 - (b) no further disclosure relating to that processing is made other than –
 - (i) as required by law, including by order of a court, or
 - (ii) as permitted by Article 64 of the Data Protection Law (permitted processing for law enforcement, legal proceedings and public records purposes).

6A Annual charge: calculation of amount

- (1) The amount of a payer’s annual charge is the sum of the applicable base amount set out in paragraph (2) and every additional amount set out in any of paragraphs (3), (4) and (5) that applies in the circumstances.
- (2) The base amount that must be paid by a payer is –
 - (a) £70, if the payer has fewer than 10 full-time equivalent employees;
 - (b) £90, if the payer has at least 10, but not more than 50, full-time equivalent employees; or
 - (c) £500, if the payer has more than 50 full-time equivalent employees.
- (3) A payer who has past-year revenues of more than £5 million must also pay –
 - (a) £150, if those revenues are £20 million or less; or
 - (b) £500, if those revenues are more than £20 million.
- (4) A payer who is registered with the Jersey Financial Services Commission and is carrying on a financial services business as specified in Schedule 2 to the Proceeds of Crime (Jersey) Law 1999³ (other than in paragraphs 6, 8 and 10 of Part B) must also pay –
 - (a) £50, if the payer has fewer than 10 full-time equivalent employees;

- (b) £150, if the payer has at least 10, but not more than 50, full-time equivalent employees; or
 - (c) £600, if the payer has more than 50 full-time equivalent employees.
- (5) A payer to whom paragraph (6) applies must also pay –
 - (a) £50, if the payer has fewer than 10 full-time equivalent employees;
 - (b) £150, if the payer has at least 10, but not more than 50, full-time equivalent employees; or
 - (c) £350, if the payer has more than 50 full-time equivalent employees.
- (6) This paragraph applies to any payer, other than a payer exempted from the requirement to register with the Jersey Financial Services Commission, who –
 - (a) processes special category data;
 - (b) to which paragraph (4) does not apply; and
 - (c) has past-year revenues of at least £100,000.
- (7) For the purposes of this Regulation, in determining the number of full-time equivalent (“FTE”) employees of a payer –
 - (a) a person employed for no more than 9 hours a week is treated as 25% of a FTE employee;
 - (b) a person employed for more than 9 hours but no more than 18 hours a week is treated as 50% of a FTE employee;
 - (c) a person employed for more than 18 hours but not more than 27 hours a week is treated as 75% of a FTE employee; and
 - (d) a person employed for more than 27 hours a week is treated as a FTE employee.
- (8) The determination referred to in paragraph (7) must be calculated on the basis of the highest number of posts existing at any time during the past 12 months, ignoring any vacancies.
- (9) The Authority may –
 - (a) issue guidance regarding the calculation of the number of full-time equivalent employees and whether any particular category of worker is to be treated as an employee or not; and
 - (b) make determinations on the application of paragraphs (7) and (8) to any payer.
- (10) In this Regulation, “employee” includes –
 - (a) if the payer is an individual, the payer;
 - (b) an office holder of the payer; and
 - (c) if the payer is a partnership, an individual who is a partner.

6B Exception for payer being administered by trust company businesses or fund services businesses

- (1) In this Regulation, “trust company business” and “fund services business” have the same meanings as in Article 1(1) of the Financial Services (Jersey) Law 1998⁴.
- (2) Despite Regulation 6A, the amount of the annual charge for a registered controller or registered processor that is being administered by a trust company business or a fund services business is £50.
- (3) A registered controller or registered processor referred to in paragraph (2) is not eligible under Regulation 6(4) for an exemption from paying the annual charge.

6C Information requirement

- (1) When paying an annual charge to the Authority, a payer must provide the Authority with sufficient information to identify the payer and substantiate that the amount of the payment is correct, including, where relevant, information on –
 - (a) the number of the payer’s full-time equivalent employees, as determined under Regulation 6A(7) and (8);
 - (b) the payer’s past-year revenues;
 - (c) whether the payer is registered with the Jersey Financial Services Commission;
 - (d) whether the payer processes special category data; and
 - (e) in the case of a payer falling within Regulation 6B, the name of the trust company business or fund services business by which the payer is administered.
- (2) A payer must provide the Authority with any additional information requested by the Authority that relates to the calculation of the payer’s annual charge.”.

5 Regulation 7 (power to remove entry in register) amended

In Regulation 7 of the 2018 Regulations –

- (a) in sub-paragraph (a), “or” is deleted;
- (b) after sub-paragraph (b) there is inserted –
 - “(c) fails to provide sufficient information as required by Regulation 6C; or
 - (d) provides information under Regulation 6C that, in any material way, is false, misleading or incomplete.”.

6 Schedule (classes of processing attracting exemption from charges) amended

In the Schedule to the 2018 Regulations, for paragraphs 1 and 2 there is substituted –

“1 Public authorities

Processing that is carried out by a registered controller who is a public authority.

1A Candidates for election

Processing that –

- (a) is carried out by a registered controller who has been admitted as a candidate for a public election of an officer in a constituency under Article 18 of the Public Elections (Jersey) Law 2002⁵;
- (b) is for the purpose of the contesting of the public election by the registered controller;
- (c) does not involve disclosure of the personal data to a third party otherwise than –
 - (i) with the consent of the data subject, or
 - (ii) in a case where it is necessary to make such disclosure for that purpose; and
- (d) does not involve keeping the personal data after it is no longer necessary for the purpose of contesting that public election.

1B Provided schools

Processing that is carried out by a registered controller that is a provided school, as defined in Article 1(1) of the Education (Jersey) Law 1999⁶.

2 Accounts and records after ceasing to conduct business

Processing that –

- (a) is solely for the purpose of retaining personal data as required by law after ceasing to conduct business;
- (b) is carried out by a registered controller who has ceased conducting any business or activity other than retaining the personal data; and
- (c) does not involve the disclosure of the personal data other than –
 - (i) with the consent of the data subject, or
 - (ii) in the case where the disclosure is necessary for the purpose referred to in sub-paragraph (a).”.

7 Transitional provision

If, before the commencement of these Regulations, a registered controller or registered processor has already paid an annual charge in respect of any portion of the year 2020, the pro rata amount of the payment attributable to that year is subtracted from the amount to be paid as the annual charge for 2020 due on or after such commencement.

8 Citation and commencement

These Regulations may be cited as the Data Protection (Registration and Charges) (Amendment) (Jersey) Regulations 201- and come into force on 1st January 2020.

ENDNOTES

Table of Endnote References

<i>1</i>	<i>chapter 15.245</i>
<i>2</i>	<i>chapter 15.240.70</i>
<i>3</i>	<i>chapter 08.780</i>
<i>4</i>	<i>chapter 13.225</i>
<i>5</i>	<i>chapter 16.600</i>
<i>6</i>	<i>chapter 10.800</i>