

STATES OF JERSEY



DRAFT DATA PROTECTION (AMENDMENT No. 2) (JERSEY) LAW 200-

**Lodged au Greffe on 16th September 2009
by the Minister for Treasury and Resources**

STATES GREFFE



Jersey

DRAFT DATA PROTECTION (AMENDMENT No. 2) (JERSEY) LAW 200-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Treasury and Resources has made the following statement –

In the view of the Minister for Treasury and Resources the provisions of the Draft Data Protection (Amendment No. 2) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator P.F.C. Ozouf**

REPORT

After a review of the regulatory requirements, both in light of local experience as well as changes made to U.K. legislation, the following amendments to the Data Protection (Jersey) Law 2005 are proposed –

1. A provision to provide the Commissioner with powers to serve information notices on other relevant persons in addition to data controllers and processors.
2. A provision to remove the requirement for the Tribunal President to have 7 years' experience.

Financial and manpower implications

There are no financial or manpower implications for the States arising from this Draft Law.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 14th September 2009 the Minister for Treasury and Resources made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Treasury and Resources the provisions of the Draft Data Protection (Amendment No. 2) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This draft Law amends the Data Protection (Jersey) Law 2005 (“principal Law”).

Article 1 is an interpretation provision.

Article 2 amends Article 43 of the principal Law by expanding the category of persons from whom the Data Protection Commissioner (“Commissioner”) can require information for an investigation whether data processing is being carried out in accordance with the data protection principles or otherwise in accordance with the principal Law. Currently Article 43 allows the Commissioner to serve notice requiring such information only on the “relevant data controller” (or data processor acting on behalf of the data controller). The amendment allows the Commissioner to serve notice on any person provided that the Commissioner regards the information sought as being relevant to the investigation and reasonably believes that the recipient of the notice has such information. The Commissioner is required to give reasons in the notice for thinking that the information sought is relevant.

Article 3 amends Schedule 5 of the principal Law in respect of the requirement that the President of the Data Protection Tribunal must be an advocate or solicitor of at least 7 years’ standing. Under the amendment no minimum length of time for qualification as an advocate or solicitor is required.

Article 4 cites the title of the draft Law and provides that it shall come into force 7 days after registration.



Jersey

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Arrangement

Article

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Jersey

DRAFT DATA PROTECTION (AMENDMENT No. 2) (JERSEY) LAW 200-

A LAW to amend the Data Protection (Jersey) Law 2005.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law “principal Law” means the Data Protection (Jersey) Law 2005¹.

2 Article 43 amended

In Article 43 of the principal Law –

- (a) for paragraphs (1) and (2) there shall be substituted the following paragraphs –

“(1) If the Commissioner –

- (a) has received a request under Article 42 in respect of any processing of personal data; or
(b) reasonably requires any information for the purpose of determining whether a data controller has complied, or is complying, with the data protection principles,

the Commissioner may serve notice on any person requiring that person to furnish to the Commissioner, in a specified form (if any) and within a specified period, specified information relating to the request or to compliance with the principles.

- (2) An information notice shall contain –

- (a) in the case referred to in paragraph (1)(a), a statement –
 - (i) that the Commissioner has received a request under Article 42 in relation to the processing,
 - (ii) that the Commissioner regards the specified information as relevant for the purpose of determining whether any processing (whether or not carried out by the person on whom the notice is served) has been or is being carried out in compliance with the provisions of the Law and the Commissioner’s reasons for regarding the specified information as being so relevant, and
 - (iii) that the Commissioner reasonably believes that the recipient of the notice has the specified information; or
- (b) in the case referred to in paragraph (1)(b), a statement –
 - (i) that the Commissioner regards the specified information as relevant for the purpose of determining whether a data controller (whether or not the person on whom the notice is served) has complied or is complying with the data protection principles and the Commissioner’s reasons for regarding it as so relevant, and
 - (ii) that the Commissioner reasonably believes that the recipient of the notice has the specified information.”;
- (b) for paragraph (11) there shall be substituted the following paragraph –

“(11) Nothing in paragraph (1) prevents the Commissioner from serving notices under that paragraph on more than one person, including on both a data controller and a data processor.”.

3 Schedule 5 amended

In paragraph 9(8) of Schedule 5 to the principal Law the words “of at least 7 years’ standing” shall be deleted.

4 Citation and commencement

This Law may be cited as the Data Protection (Amendment No. 2) (Jersey) Law 200- and shall come into force 7 days after it is registered.

¹ *chapter 15.240*