

STATES OF JERSEY



DRAFT DATA PROTECTION (SUBJECT ACCESS MODIFICATION – EDUCATION) (JERSEY) REGULATIONS 200

Lodged au Greffe on 11th October 2005
by the Finance and Economics Committee

STATES GREFFE



Jersey

DRAFT DATA PROTECTION (SUBJECT ACCESS MODIFICATION – EDUCATION) (JERSEY) REGULATIONS 200

REPORT

Data controllers who process educational data are provided with partial exemption from the subject information provisions where such disclosure is likely to cause serious harm to the physical or mental health or condition of the data subject or another person. If a data subject has been the subject of or at risk of child abuse, personal data need not be disclosed if it is not in the best interests of the data subject.

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

Explanatory Note

These Regulations provide for the partial exemption of educational records from the operation of the subject information provisions of the Data Protection (Jersey) Law 2004 – provisions that confer rights on data subjects to be informed about personal data held about them.

The subject information provisions are Article 7 of the Law and one aspect of the first data protection principle. They require disclosure of certain key information about data to the person who is the subject of the data.

Regulation 1 is an interpretation provision. It includes a definition of an educational record as (in sum) certain school-based information about a school pupil.

Regulation 2 exempts from the operation of the proposed Regulations personal data already exempt under the Data Protection (Subject Access Modification – Health) (Jersey) Regulations 200- or under Regulations made under Article 38(1) of the Law (Regulations that preserve the operation of pre-existing legal restrictions on disclosure).

Regulation 3 exempts from the subject information provisions data consisting of certain information that comes before the courts and would fall within the definition of an educational record. Those data include evidence in proceedings concerning families or children, for example proceedings concerning adoption, matrimonial matters and guardianship. The data are exempt if a court so orders on the basis of the data subject's level of understanding or of serious harm to the data subject.

Regulation 4 exempts educational records from certain provisions of Article 7 of the Law if they amount to data whose disclosure would be likely to cause serious harm to the data subject or another person.

Regulation 5 exempts educational records from disclosure under Article 7 of the Law to someone who has the role of parent or guardian (or the like) in relation to a child or in relation to a person unable to manage his or her own affairs. The exemption applies if the records consist of information whether the data subject is or has been the subject of or may be at risk of abuse.

On the other hand *Regulation 6* modifies Article 7 of the Law in relation to educational records, partly to cut down an existing exemption. A data controller will not be able to refuse access on the grounds that information about a third party would also be disclosed if in fact the third party falls into a class of persons that are teachers or other employees at a school, persons to whom the information relates or who supplied the information as education employees of the States, or indeed the person making the request. However, further modifications introduce the possibility of a court's ordering a data controller not to comply with a request for information if serious harm to a person's physical or mental health or condition is likely to be caused by giving the information.

Regulation 7 sets out the name of the Regulations and states when they come into force.

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

DRAFT DATA PROTECTION (SUBJECT ACCESS MODIFICATION – EDUCATION) (JERSEY) REGULATIONS 200-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Articles 30(2) and 67 of the Data Protection (Jersey) Law 2005, ^[1] have made the following Regulations –

1 Interpretation

In these Regulations –

“educational record” means a record of information that –

- (a) is processed by or on behalf of the proprietor of, or a teacher at, a school;
- (b) relates to a person who is or has been a pupil at the school; and
- (c) originated from or was supplied by or on behalf of any of the following –
 - (i) a teacher or other employee at the school;
 - (ii) a person engaged by the proprietor of the school under a contract for the provision of educational services;
 - (iii) the pupil to whom the record relates;
 - (iv) a parent of that pupil;

“Law” means the Data Protection (Jersey) Law 2005;

“parent” in relation to a pupil, includes a guardian and every person who has actual custody of the pupil.

2 Personal data to which Regulations do not apply

These Regulations do not apply to –

- (a) personal data that consist of information as to the physical or mental health or condition of the data subject and to which the Data Protection (Subject Access Modification – Health) (Jersey) Regulations 200-^[2] apply; or
- (b) personal data exempted from Article 7 of the Law by Regulations under Article 38(1) of the Law.

3 Data processed by court exempt from subject information provisions

- (1) Subject to Regulation 2, personal data are exempt from the subject information provisions if the data are processed by a court and consist of information that constitutes an educational record and that –
 - (a) is supplied in a report or other evidence given to the court in the course of proceedings relating

to families or children; and

- (b) the court directs should be withheld from the data subject on the ground that it appears –
 - (i) to be impracticable to disclose the report or other evidence having regard to the data subject’s age and understanding; or
 - (ii) to be undesirable to disclose the report or other evidence having regard to the serious harm that might thereby be suffered by the data subject.
- (2) For the purposes of this Article, “proceedings relating to families or children” includes proceedings relating to adoption, matrimonial matters or guardianship.

4 Exemption from Article 7 if harm likely to any person

Subject to Regulation 2, personal data consisting of information constituting an educational record are exempt from Article 7 of the Law in any case to the extent to which the application of that Article would be likely to cause serious harm to the physical or mental health or condition of the data subject or any other person.

5 Exemption from Article 7 if person looks after data subject

- (1) Subject to Regulation 2, in a case where a defined person is enabled by or under any enactment or rule of law to make a request under Article 7 of the Law on behalf of a data subject and has made such a request, personal data specified in paragraph (2) are exempt from Article 7 of the Law to the extent to which the application of that Article would not be in the interests of the data subject.
- (2) The personal data is personal data consisting of information constituting an educational record and being information whether the data subject, when a child, is or has been the subject of or may be at risk of abuse.
- (3) For the purposes of this Regulation –
 - “abuse” in respect of a person when that person is a child –
 - (a) includes physical injury to, and physical neglect, emotional neglect, ill-treatment, and sexual abuse, of the person;
 - (b) does not include accidental injury;
 - “defined person” means a person who –
 - (a) has parental responsibility for a child who is the data subject; or
 - (b) has been appointed by a court to manage the affairs of a person who is the data subject and incapable of managing his or her own affairs.

6 Modifications of Article 7

Subject to Regulation 2, in relation to personal data consisting of information constituting an educational record –

- (a) Article 7(7) of the Law shall have effect as if the following word and sub-paragraph were inserted at the end of that paragraph –
 - “; or
 - (c) the other individual is a relevant person.”;
- (b) Article 7(12) of the Law shall have effect as if it read as follows –
 - “(12) If a court is satisfied on the application of –
 - (a) a person who has made a request under the other provisions of this Article; or
 - (b) a person who would be likely to suffer serious harm to his or her physical or

mental health or condition because of compliance with a request made under those provisions, being compliance in contravention of those provisions,

that the relevant data controller has failed to comply with or is about to comply with the request, being failure or compliance in contravention of those provisions, the court may order the data controller to comply or, as the case may be, not to comply with the request.

(12A) A person is a relevant person for the purposes of paragraph (7)(c) if he or she –

- (a) is a teacher or other employee at a school;
- (b) is engaged by the proprietor of a school or working at a school under a contract for the provision of educational services;
- (c) being a person to whom the information in question relates or who supplied the information in question in his or her capacity as a person employed by the States in the performance of functions relating to education, is a person so employed in the performance of such functions; or
- (d) is the person making the request.”.

7 Citation and commencement

These Regulations may be cited as the Data Protection (Subject Access Modification – Education) (Jersey) Regulations 200- and shall come into force on 1st December 2005.

[1] L.2/2005.

[2] P.186/2005.