

STATES OF JERSEY



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

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

STATES GREFFE



Jersey

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

REPORT

Data controllers who process personal data for the purposes of social work 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.

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 2 classes of personal data from the operation of the subject information provisions of the Data Protection (Jersey) Law 2005 – 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.

Regulation 2 excepts from the operation of the proposed Regulations personal data already exempt under the Data Protection (Subject Access Modification – Health) (Jersey) Regulations 200- or the Data Protection (Subject Access Modification – Education) (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 (and *paragraph 2 of the Schedule*) exempt from the subject information provisions a class of data that come before the courts. 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 because disclosure could seriously harm the data subject.

Regulation 4 (and *paragraph 1 of the Schedule*) exempt from certain provisions of Article 7 of the Law a class of data relating to housing, social security benefits, probation, school attendance, guardianship, children in general or mental health. The data are exempt if their disclosure could prejudice the carrying out of social work by causing serious harm.

Regulation 5 exempts both the above classes of data 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 child or person would not have expected the data to be disclosed to the parent or guardian.

On the other hand, in relation to the class of data referred to in paragraph 1 of the Schedule, *Regulation 6* modifies Article 7 of the Law 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 certain public officers. 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.



Jersey

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SCHEDULE

CLASSES OF EXEMPT PERSONAL DATA



Jersey

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

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Articles 30(3) and 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 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] or the Data Protection (Subject Access Modification – Education) (Jersey) Regulations 200-^[3] 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

Subject to Regulation 2, personal data specified in paragraph 2 of the Schedule are exempt from the subject information provisions.

4 Certain data processed by States exempt from Article 7 where prejudice to social work

Subject to Regulation 2, personal data specified in paragraph 1 of the Schedule are exempt from subparagraphs (a), (b) and (c) of Article 7(1), and Article 7(2) and (3), of the Law in any case to the extent to which the application of those provisions would be likely to prejudice the carrying out of social work by reason of the fact that serious harm to the physical or mental health or condition of the data subject or any other person would be likely to be caused.

5 Exemption from Article 7 where 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 1 or 2 of the Schedule are exempt from Article 7

of the Law to the extent to which the application of that Article would result in the disclosure of information –

- (a) provided by the data subject in the expectation that it would not be disclosed to the person making the request;
 - (b) obtained as a result of any examination or investigation to which the data subject consented in the expectation that the information would not be so disclosed; or
 - (c) that the data subject has expressly indicated should not be so disclosed.
- (2) Paragraph (1)(a) or (b) does not apply to the extent that the data subject has expressly indicated that he or she no longer has the expectation referred to in that sub-paragraph.
- (3) For the purposes of this Regulation, a defined person is 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 specified in paragraph 1 of the Schedule –

- (a) Article 7(7) of the Law shall have effect as if the following word and sub-paragraph were inserted at the end of the latter 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 is or has been employed in an administration of the States in connection with functions that are or have been exercised in relation to data consisting of information that relates to him or her or that he or she supplied in his or her official capacity.”.

7 Citation and commencement

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

SCHEDULE

(Regulations 3, 4 and 5)

CLASSES OF EXEMPT PERSONAL DATA

1. Personal data processed by the States (including an administration of the States) in relation to any of the following matters –
 - (a) the allocation of housing or other residential accommodation;
 - (b) the provision of any benefit under the Health Insurance (Jersey) Law 1967^[4] or Social Security (Jersey) Law 1974;^[5]
 - (c) probation;
 - (d) school attendance;
 - (e) ensuring that children receive suitable education whether by attendance at school or otherwise;
 - (f) guardianship;
 - (g) a function under the Children (Jersey) Law 1969^[6] or the Mental Health (Jersey) Law 1969.^[7]
- 2.-(1) Personal data processed by a court and consisting of information 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 paragraph, "proceedings relating to families or children" includes proceedings relating to adoption, matrimonial matters or guardianship.

[1] L.2/2005.

[2] P.186/2005.

[3] P.185/2005.

[4] Chapter 26.500.

[5] Chapter 26.900.

[6] Chapter 12.200.

[7] Chapter 20.650.