

**DRAFT DATA PROTECTION (REGULATION OF FINANCIAL
SERVICES, ETC.) (SUBJECT ACCESS EXEMPTION)
(AMENDMENT No. 3) (JERSEY) REGULATIONS 199**

**Lodged au Greffe on 19th May 1998
by the Finance and Economics Committee**



STATES OF JERSEY

STATES GREFFE

Report

Under the Data Protection (Jersey) Law 1987, personal data held on a computer system must be available to the person concerned; in other words the subject must have access.

Article 29 of the Data Protection (Jersey) Law 1987 provides that personal data held for the purpose of discharging functions relating to the regulation of financial services to which an exemption applies is exempt from the subject access provisions of that Law in any case in which the application of those provisions to the data would be likely to prejudice the proper discharge of those functions.

The Finance and Economics Committee, when it carries out various functions in relation to the regulation of financial services, is at present so exempt under existing regulations. The functions of the Committee in that connection are to be transferred on 1st July 1998 to the new Jersey Financial Services Commission. The new Regulations are required so as to provide continuing exemption from subject access.

The Regulations also restate the exemption for the Viscount in relation to his duties under the Bankruptcy (Désastre) (Jersey) Law 1990.

The purpose of the Regulations is to ensure that data held on individuals who have a relationship with regulated entities or entities that should be regulated, cannot be accessed by those individuals who may be subject to review or investigation by the Commission.

At the same time, the opportunity has been taken to bring the Regulations into line with current international practice including that of the United Kingdom. The Regulations are now more specific in specifying the functions which carry exemptions by reference to particular Articles of each regulatory law, as opposed to each regulatory law in general.

The exempted information will only be held by the Jersey Financial Services Commission (as of now by the Financial Services Department) in connection with the functions which are “designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance investment or other financial services or in the management of companies or to the conduct of discharged or undischarged bankrupts” (Article 29 of the 1987 Law).

Explanatory Note

The purpose of these Regulations is to replace the Schedule to the Data Protection (Regulation of Financial Services, etc.) (Subject Access Exemption) (Jersey) Regulations 1987 as a result of a number of changes in the legislation and functions to which the replaced Schedule refers as well as the passing of further legislation.

Among those changes are the transfer of certain powers of the Finance and Economics Committee to the Jersey Financial Services Commission as a consequence of the enactment of the Financial Services Commission Law 1998. This Law sets up the Commission as a statutory body corporate with functions that include the supervision of various financial services in Jersey. This instrument is one of a number that make corresponding changes to subordinate legislation that contains references to the Committee.

Data Protection (Jersey) Law 1987

DATA PROTECTION (REGULATION OF FINANCIAL SERVICES,
ETC.) (SUBJECT ACCESS EXEMPTION) (AMENDMENT No. 3)
(JERSEY) REGULATIONS 1998

THE STATES, in pursuance of Articles 29 and 40 of the Data Protection (Jersey) Law 1987,¹ as amended, have made the following Regulations -

1. For the Schedule to the Data Protection (Regulation of Financial Services, etc.) (Subject Access Exemption) (Jersey) Regulations 1987,² as amended,³ there shall be substituted the following Schedule -

“SCHEDULE

(Regulation 1)

Functions designated for the purposes of Article 29 of the Law

| (1) | (2) |
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| <i>Enactment or provision of customary law by or under which function conferred</i> | <i>Description of function</i> |
| Registration of Business Names (Jersey) Law 1956, as amended ⁴ | Functions of the registrar under Articles 11, 14(3) and 15(1). |
| Control of Borrowing (Jersey) Order 1958, as amended ⁵ | Functions of the Jersey Financial Services Commission under Articles 3, 4, 4A, 4B, 5, 6, 7 and 8. |

¹ Recueil des Lois, Volume 1986-1987, pages 353 and 363.

² No. 7703.

³ Nos. 8043 and 8599.

⁴ Recueil des Lois, Tome VIII, pages 526 and 527.

⁵ No. 3943.

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| Collective Investment Funds (Jersey) Law 1988, ⁶ as amended | Functions of the Jersey Financial Services Commission under Articles 5(2), 6(1), (3), (6)(a) and (b) and (d) to (f), 8(1) to (3), 12(1) and (2), 19(1) and 20(1), (3), (5) and (7). |
| | Functions of an inspector under Article 19(2). |
| Company Securities (Insider Dealing) (Jersey) Law 1988, ⁷ as amended | Functions of the Finance and Economics Committee, and of the Jersey Financial Services Commission, under Article 15(1). |
| | Functions of an inspector under Articles 15(3) to (5) and 16(1) and (4). |
| Bankruptcy (Désastre) (Jersey) Law 1990, ⁸ as amended, ⁹ and customary law referring to bankruptcy | Functions of the Viscount in relation to the investigation of bankruptcies, the realisation of a bankrupt person's assets and the distribution of any proceeds of such realisation among proven creditors. |
| | Functions of the Jersey Financial Services Commission under Articles 3(1) and 7(4). |
| Banking Business (Jersey) Law 1991, ¹⁰ as amended ¹¹ | Functions of the Jersey Financial Services Commission under Articles 6, 8, 9(1), 13(1), (3) and (4), 14(1), 16(2), (3) and |

⁶ Recueil des Lois, Volume 1988-1989, pages 142 to 145, 151 and 158 to 161.

⁷ Recueil des Lois, Volume 1988-1989, pages 16 to 19.

⁸ Recueil des Lois, Volume 1990-1991, pages 49 and 52.

⁹ Recueil des Lois, Volume 1994-1995, pages 399 to 401.

¹⁰ Recueil des Lois, Volume 1990-1991, pages 493, 495, 497, 498, 501, 502, 504, 505, 507, 510, 511, 513, 514, 518, 519, 522, 524, 530, 532, 535 and 536.

¹¹ Recueil des Lois, Volume 1994-1995, page 375.

(5), 18(1), 20(1) and (5), 23(3), 25, 26(2), 27(1), 28, 34, 35 and 38.

Functions of the Jersey Financial Services Commission under Article 10 with respect to conditions of registration of any particular individual.

Functions of an officer or agent of the Jersey Financial Services Commission under Articles 26 and 28.

Functions of a person appointed under Article 27.

Functions of a person executing a warrant under Article 29.

Disclosure by the Jersey Financial Services Commission as referred to in Articles 42(2) and (3), 43(1) and (2) and 44.

Companies (Jersey) Law 1991,¹² as amended¹³

Functions of the registrar under Part II and Article 217.

Functions of the Jersey Financial Services Commission under Article 78, Part XIX and Article 142.

Functions of an inspector under Part XIX.

Functions of the Attorney General under Articles 78 and 217.

¹² Volume 1990-1991, pages 893, 953, 1005, 1014 and 1066.

¹³ Volume 1996-1997, pages 684 and 685.

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| <p>Limited Partnerships (Jersey) Law 1994,¹⁴ as amended</p> | <p>Functions of the registrar under Article 7(5).</p> |
| <p>Insurance Business (Jersey) Law 1996,¹⁵ as amended</p> | <p>Functions of the Jersey Financial Services Commission under Articles 3, 5(1)(ii), 6(1), (4) to (6) and (9), 8, 9(1) to (5), 10(1), 11(1) and (2), 15(4), 16(2), 17(5), 22(5) to (7), 23(4), (6) and (11), 27(1) and (2) and 34(1), (3) to (5).</p> |
| | <p>Functions of a person, agent or officer authorised by the Jersey Financial Services Commission, being functions under Articles 9(3)(b) and (4), 10(1), (3) and (5) and 11(1) and (2).</p> |
| | <p>Disclosure by the Jersey Financial Services Commission as referred to in Articles 29(2) and (3), 30(1) and (2) and 31.</p> |
| <p>Limited Liability Partnerships (Jersey) Law 1997,¹⁶ as amended</p> | <p>Functions of the registrar under Article 7(4).</p> |
| <p>Financial Services Commission (Jersey) Law 1998¹⁷</p> | <p>Functions of the Jersey Financial Services Commission referred to in Articles 5(1)(a), (c), (d) and (e) and 6.</p> |
| | <p>Functions of the Jersey Financial Services Commission under Articles 8(1) and (2) and 12(1).”</p> |

¹⁴ Volume 1994-1995, page 179.

¹⁵ Volume 1996-1997, pages 88, 91 to 94, 96, 97, 99 to 102, 106, 107, 109, 112, 114, 115, 118, 120, 121, 124 and 125.

¹⁶ Volume 1996-1997, page 518.

¹⁷ L.11 of 1998.

2. These Regulations may be cited as the Data Protection (Regulation of Financial Services, etc.) (Subject Access Exemption) (Amendment No. 3) (Jersey) Regulations 1998 and shall come into force on the first day of July 1998.