

STATES OF JERSEY



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

**Lodged au Greffe on 8th February 2018
by the Chief Minister**

STATES GREFFE



Jersey

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REPORT

The Data Protection Authority (Jersey) Law 201- (“the Authority Law”) will come into effect on 25th May 2018, subject to Privy Council approval and registration in the Royal Court.

Before the Authority Law comes into effect, Regulations need to be made to supplement the provision made in Articles 17 and 18 of that Law.

These draft Regulations will make provision with respect to the registration of controllers and processors by the Data Protection Authority (“the Authority”), and renewal of the registration of controllers registered under the Data Protection (Jersey) Law 2005.

The draft Regulations will maintain key features of the Data Protection (Notification) (Jersey) Regulations 2005, though there are some differences. The draft Regulations will –

- require all data controllers and processors to register with the Authority;
- maintain exemptions from annual renewal charges for processing for staff administration and accounts and record-keeping only, and by not-for-profit organisations;
- maintain annual renewal charges at £50; and
- govern other administrative matters, including the maintenance by the Authority of the register of data controllers and processors.

Article 17 of the Authority Law empowers the Authority to determine the process for first registration of a controller or processor. The Authority will maintain the one-off registration fee for new data controllers and processors at £50 with parallel exemptions to those described in these Regulations.

The intention is to rescind and replace these draft Regulations by 25th May 2019 to introduce a ‘risk-based tiered levy’. The risk-based model is necessary to maintain adequacy with the General Data Protection Regulation, support the funding of the Authority and ensure that charges are levied fairly. The proposed model will come before the States Assembly for debate.

In the meantime, by largely maintaining the *status quo* in respect of registration and renewal, these draft Regulations will provide regulatory certainty both to the Authority and to data controllers and processors.

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Ministers to the Chief Minister, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Financial and manpower implications

There are no additional financial or manpower implications for the States arising from the adoption of these draft Regulations.

Explanatory Note

These Regulations make provision with respect to various matters in connection with the registration of controllers and processors as well as prescribing an annual charge and exemptions from it.

Regulation 1 contains the definitions of terms used in the Regulations.

Regulation 2 sets out the particulars that the Data Protection Authority (the “Authority”) may include in an entry in a register of controllers and processors who are required to register under Article 17 of the Data Protection Authority (Jersey) Law 201- (the “Law”).

Regulation 3 requires the Authority as soon as practicable and in any event within 28 days of making, amending or removing an entry in a register, to notify the controller or processor concerned.

Regulation 4 places an obligation on registered controllers and registered processors to notify the Authority of changes in particulars they were required to provide in respect of the application for registration as soon as practicable and in any event within 28 days of the change. Special provision is made for controllers already registered under the former data protection regime.

Regulation 5 provides that controllers who are temporarily exempt from registration under transitional arrangements must be registered if the provisions of Article 17 of the Law and these Regulations are met.

Regulation 6 provides for an annual charge of £50 to be paid unless exempted in accordance with the *Schedule*. The *Schedule* prescribes processing in connection with staff administration, accounts and records and by non-profit associations as the classes exempt from the annual charge.

Regulation 7 provides for the Authority to remove an entry in a register where the controller or processor concerned fails to notify a change in particulars or pay the required charge.

Regulation 8 names the Regulations and provides for them to come into force on 25th May 2018.



Jersey

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Arrangement

Regulation

1	Interpretation	9
2	Particulars in register	9
3	Notification of registration	10
4	Requirement to notify changes to particulars	10
5	Controllers already registered	10
6	Requirement to pay annual charge	10
7	Power to remove entry in register	11
8	Citation and commencement	11

SCHEDULE **12**

CLASSES OF PROCESSING ATTRACTING EXEMPTION FROM CHARGES		12
1	Staff administration	12
2	Accounts and records	12
3	Non-profit associations	13



Jersey

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

THE STATES, in pursuance of Articles 18 and 46 of the Data Protection Authority (Jersey) Law 201⁻¹, have made the following Regulations –

1 Interpretation

In these Regulations –

“Law” means the Data Protection Authority (Jersey) Law 201⁻²;

“register” means a register of controllers and processors who are required to register under Article 17 of the Law;

“registration period” has the same meaning as in paragraph 2 of Schedule 2 to the Law;

“staff” includes persons employed within the meaning of the Employment (Jersey) Law 2003³ and volunteers.

2 Particulars in register

The Authority may include the following particulars in an entry in a register –

- (a) whether the entry is in respect of a controller or processor or both;
- (b) a registration number issued by the Authority in respect of the entry;
- (c) the date on which the entry is treated as having been included in the register;
- (d) information that may assist persons consulting the register to contact any controller to whom the entry relates about the processing of personal data;
- (e) such further information as the Authority considers necessary or expedient for the purposes of fulfilling its functions under the Law.

3 Notification of registration

The Authority must, as soon as practicable and in any event within 28 days of making, amending or removing an entry in a register, notify the controller or processor to whom the entry relates –

- (a) of the making or amending of the entry, the date of that entry or amendment and the particulars currently included within the entry; or
 - (b) of the removal of the entry,
- as the case may be.

4 Requirement to notify changes to particulars

- (1) Registered controllers and registered processors must notify the Authority of any change in the particulars that they were required to provide to the Authority in respect of their application for registration as soon as practicable and in any event within 28 days of the change.
- (2) Controllers to whom Regulation 5 applies must notify the Authority of any change in the particulars included in their entry in the register maintained under the Data Protection (Jersey) Law 2005⁴ on or before the end of the registration period.

5 Controllers already registered

- (1) This Regulation applies to any controller who is exempt from the requirement to register under Part 3 of the Law until the end of the registration period by virtue of paragraph 2 of Schedule 2 to the Law.
- (2) A controller to whom this Regulation applies must, at the end of the registration period, be registered under Article 17 if the provisions of these Regulations are met.

6 Requirement to pay annual charge

- (1) Subject to paragraph (2), registered controllers and registered processors must pay an annual charge of £50 on each anniversary of –
 - (a) the date of first registration under Article 17 of the Law; or
 - (b) in the case of controllers to whom Regulation 5 applies, the end of the registration period.
- (2) A registered controller is exempt from paying the charge in paragraph (1) if the only processing carried out by that controller is processing that –
 - (a) falls within any of the classes of processing set out in the Schedule; or
 - (b) would fall within one of those classes of processing but for paragraph 1(d), 2(d) or 3(e) of the Schedule and where the disclosure –
 - (i) is required by law or by order of a court, or
 - (ii) is permitted by Article 64 of the Data Protection Law.

7 Power to remove entry in register

The Authority may remove an entry in a register where the controller or processor relating to that entry –

- (a) fails to comply with Regulation 4; or
- (b) fails to pay the charge as required by Regulation 6.

8 Citation and commencement

These Regulations may be cited as the Data Protection (Registration and Charges) (Jersey) Regulations 201- and come into force on 25th May 2018.

SCHEDULE

(Regulation 6(2))

CLASSES OF PROCESSING ATTRACTING EXEMPTION FROM CHARGES**1 Staff administration**

Processing that –

- (a) is for any one or more of the purposes, in relation to the staff of the registered controller, of appointment, removal, pay, discipline, superannuation, work management and any other human resources matter;
- (b) is of personal data in respect of which the data subject is –
 - (i) a past, existing or prospective member of staff of the registered controller, or
 - (ii) any person the processing of whose personal data is necessary for any of the purposes referred to in sub-paragraph (a);
- (c) is of personal data consisting of any one or more of the following in respect of the data subject –
 - (i) name,
 - (ii) address,
 - (iii) other identifiers,
 - (iv) information as to qualifications,
 - (v) information as to work experience,
 - (vi) information as to pay,
 - (vii) information as to any other matter the processing of which is necessary for any of the purposes referred to in sub-paragraph (a);
- (d) 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 any of those purposes; and
- (e) does not involve keeping the personal data after the relationship between the registered controller and the data subject ends, except for so long as it is necessary to do so for any of those purposes.

2 Accounts and records

Processing that –

- (a) is for any one or more of the following purposes so far as they relate to the conduct of any business or activity carried on by the registered controller –
 - (i) keeping accounts,

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- (ii) deciding whether to accept any person as a customer or supplier,
 - (iii) keeping records of purchases, sales or other transactions in order to ensure that the requisite payments or deliveries are made or services provided by or to the registered controller in respect of those purchases, sales or other transactions,
 - (iv) making financial or management forecasts;
- (b) is of personal data in respect of which the data subject is –
- (i) a past, existing or prospective customer, or supplier, of the registered controller, or
 - (ii) a person the processing of whose personal data is necessary for any of the purposes referred to in sub-paragraph (a);
- (c) is of personal data (other than personal data processed by or obtained from a credit reference agency) consisting of any one or more of the following in respect of the data subject –
- (i) name,
 - (ii) address,
 - (iii) other identifiers,
 - (iv) information as to financial standing,
 - (v) information as to any other matter the processing of which is necessary for any of the purposes referred to in sub-paragraph (a);
- (d) 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 the disclosure for any of those purposes; and
- (e) does not involve keeping the personal data after the relationship between the registered controller and the data subject ends, except for so long as it is necessary to do so for any of those purposes.

3 Non-profit associations

Processing that –

- (a) is carried out by a registered controller that is a non-profit association (as described in paragraph 10(a) of Schedule 2 to the Data Protection Law);
- (b) is for any one or more of the purposes of establishing or maintaining membership of or support for the non-profit association or providing or administering activities for individuals who are either members of the association or have regular contact with it;
- (c) is of personal data in respect of which the data subject is –
 - (i) a past, existing or prospective member of the association,
 - (ii) a person who has regular contact with the association in connection with any of the purposes referred to in sub-paragraph (b), or
 - (iii) a person the processing of whose personal data is necessary for any of those purposes;

- (d) is of personal data consisting of any one or more of the following in respect of the data subject –
 - (i) name,
 - (ii) address,
 - (iii) other identifiers,
 - (iv) information as to eligibility for membership of the association,
 - (v) information as to any other matter the processing of which is necessary for any of the purposes referred to in sub-paragraph (b);
- (e) does not involve disclosure of the personal data to a third party other than –
 - (i) with the consent of the data subject, or
 - (ii) in a case where it is necessary to make the disclosure for any of those purposes; and
- (f) does not involve keeping the personal data after the relationship between the registered controller and data subject ends, except for so long as it is necessary to do so for any of those purposes.

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- ¹ *Law currently awaiting Privy Council sanction*
² *Law currently awaiting Privy Council sanction*
³ *chapter 05.255*
⁴ *chapter 15.240*