

STATES OF JERSEY



DATA PROTECTION COMMISSIONER AND VICE-DATA PROTECTION COMMISSIONER: RENEWAL OF APPOINTMENTS

Lodged au Greffe on 7th December 2015
by the Chief Minister

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to renew the appointment of Mrs. Emma Martins as Data Protection Commissioner for Jersey, and to appoint Mr. Paul Vane as vice-Data Protection Commissioner, in accordance with the requirements of the Data Protection (Jersey) Law 2005 on the terms set out in the Report of the Chief Minister.

CHIEF MINISTER

REPORT

Article 6 of the Data Protection (Jersey) Law 2005, provides that the States Assembly shall appoint a person to the office of the Data Protection Commissioner, and shall take all reasonable steps to ensure the position is filled at all times, and in any case appoint one or more members of the Commissioner's staff as vice-Data Protection Commissioners to act in any absence of the Commissioner.

Mrs. Emma Martins was appointed as Data Protection Registrar in 2004 following a competitive process, and thereafter from 2005 onwards undertook the role as Data Protection Commissioner in line with the transitional provisions of the 2005 Law, as also outlined in Article 6. Mrs. Martins has held this position through subsequent changes.

In October 2011, the position became a pan-Island one following the decision of the Assembly to approve the creation of a pan-Island Data Protection Commissioner and to amend the current terms and conditions of the Data Protection Commissioner for Jersey to allow engagement as the Data Protection Commissioner under the Data Protection (Bailiwick of Guernsey) Law 2001 ([P.133/2011](#)).

In 2015, Mrs. Martins also assumed responsibilities for the Freedom of Information (Jersey) Law 2011. The Information Commissioner under this Law is the person carrying out the functions of the office of Data Protection Commissioner referred to in Article 6 of the Data Protection (Jersey) Law 2005.

Schedule 5 of the Data Protection (Jersey) Law 2005 determines that a person may hold the office of Data Protection Commissioner for a term not exceeding 5 years and that a person shall be eligible for re-appointment, and the 2010 appointment by the States Assembly provided that a decision will be taken by the States as to whether the appointment is to be renewed.

Whilst the decision to appoint a pan-Island Data Protection Commissioner was taken less than 5 years ago in September, 2011, the previous decision of the Assembly to renew the appointment of Mrs. Martins as Jersey's Data Protection Commissioner was taken in December 2010 ([P.173/2010](#)) and so expired at the end of November 2015. This was not reviewed prior to this date due to an administrative oversight, which is apologised for. The appointment in Guernsey expired at the same point.

This proposition, therefore, seeks the approval of the Assembly to the re-appointment of Mrs. Emma Martins as the Data Protection Commissioner for Jersey until the 30th September 2016, on the same terms and conditions. This proposed extension has been considered and approved by the Chair of the Jersey Appointments Commission. The Home Department in Guernsey are proposing an extension to the appointment for the same term. Approval is also sought to appoint Mr. Paul Vane from the Commissioner's staff as the vice-Data Protection Commissioner to act in the absence of the Commissioner.

This extension will provide opportunity to undertake a pan-Island process for the longer term appointment of a pan-Island Data Protection Commissioner, including a review of terms and conditions, and consideration of any other arrangements which may be helpful in enhancing good governance and independence – with this work being undertaken in good time in the first quarter of 2016, in partnership with Guernsey, and

with the advice of the Jersey Appointments Commission and States' Employment Board.

More recently, and in the broader context, the European Commission has proposed a comprehensive reform of data protection rules in the EU. The European Commission can determine whether a third country ensures an adequate level of protection by reason of its domestic law or its international commitments, and in May 2008, the Commission determined that the Bailiwick of Jersey provided an adequate level of protection for personal data transferred from the European Union (2008/393/EC). A similar decision was made in respect of Guernsey in November 2003 (2003/821/EC). Agreement on a new EU framework for data protection is expected by early 2016, following which the Islands will need to consider any necessary enhancements which may be required to maintain the position of being regarded as having an adequate level of protection. The Data Protection Commissioner and the Island's governments have been following the progress of these reforms. A short extension, therefore, provides opportunity to continue to do so, in the context of preparing for a longer term appointment and arrangements for a pan-Island Commissioner. The aim will be to secure an effective appointment within the best possible governance structures for the longer term benefit of the Islands.

Financial and manpower implications

There are no additional financial or manpower implications as a result of this Proposition.