

**STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

16<sup>th</sup> May, 2018

**Proposition No. P2018/32**

**Committee for Home Affairs**

**The Data Protection (Commencement, Amendment and Transitional) (Bailiwick of Guernsey) Ordinance, 2017**

**AMENDMENT**

Proposed by: Deputy M M Lowe

Seconded by: Deputy R G Prow

In the Proposition –

- a) immediately after ""The Data Protection (Commencement, Amendment and Transitional) (Bailiwick of Guernsey) Ordinance, 2018"", insert the following –  
", subject to the amendments indicated below", and
- b) immediately after the Proposition, insert the following list of amendments to the Ordinance –

**"Amendments**

In Schedule 2 (pp. 28 – 39) to the Ordinance –

- (a) immediately after the row (p. 29) setting out amendments to be made to section 24(2)(b) and (4)(b) of the Data Protection (Bailiwick of Guernsey) Law, 2017, insert the following row –

"Section 27(2)	For subparagraph (c), substitute – "(c) the right to bring an action under section 79.".
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- (b) in the row (pp. 30 – 33) setting out the amendments to be made to section 111(1) of the Data Protection (Bailiwick of Guernsey) Law, 2017 –

- (i) for the amendment to the definition of "**law enforcement purpose**" (p.p. 31 – 32), substitute the following –

"In the definition of "**law enforcement purpose**" –

- (a) at the end of paragraph (b), omit "or",
- (b) in paragraph (c), for "the security of the British Islands", substitute "national security", and
- (c) immediately after paragraph (c), insert –  
"or
- (d) exercising or performing any power or duty conferred or imposed on a public authority by a criminal proceeds enactment," and

- (ii) in the amendment inserting new definitions in section 111(1) of the Data Protection (Bailiwick of Guernsey) Law, 2017 –

- (A) at the end of the definition of "**employee**", delete the word "and", and

- (b) immediately after the definition of "employee", insert –

" "**national security**", for the avoidance of doubt, includes the security of the British Islands and the British Overseas Territories, and" "

- (c) immediately after the row (pp. 33 – 34) setting out amendments to be made to paragraphs 3 and 19 of Schedule 2 to the Data Protection (Bailiwick of Guernsey) Law, 2017, insert the following rows –

"Paragraph 8 of Schedule 3	Immediately after "than", insert "the Bailiwick or".
Paragraph 13 of Schedule 3	Delete ", and the rights of appeal under sections 82 and 83".
Paragraph 6 of	Delete "the rights of appeal under sections 82 and 83;".",

Schedule 5	
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and

- (d) immediately before the row (pp. 38 – 39) setting out amendments to be made to paragraph 19 of Schedule 8 to the Data Protection (Bailiwick of Guernsey) Law, 2017, insert the following rows –

"Paragraph 1(7) of Schedule 7	Immediately after "give", insert "or disclose to".
Paragraph 18(1) of Schedule 8	For "the security of the British Islands", substitute "national security".

### Explanatory Memorandum

This Amendment makes amendments to the draft Ordinance entitled "The Data Protection (Commencement, Amendment and Transitional) (Bailiwick of Guernsey) Ordinance, 2018" ("**the Ordinance**"). These amendments align provisions of the Data Protection (Bailiwick of Guernsey) Law, 2017 ("**the Law**") more closely with the EU General Data Protection Regulation (Regulation (EU) 2016/679) ("**the GDPR**"), substitute references to "the security of the British Islands" with references to "national security", and clarify that legally privileged information need not be disclosed to the Data Protection Authority in response to an information notice.

Paragraph (a) of these Amendments amends Schedule 2 to the Ordinance, to insert an amendment to section 27(2) of the Law. The amendment to section 27(2) of the Law would require a controller who fails to comply with a request to exercise data subject rights to notify the requestor of the right to bring a civil action under section 79 of the Law, instead of the rights of appeal under the Law. This is in line with article 12(4) of the GDPR.

Paragraph (b)(i) of these Amendments amends Schedule 2 to the Ordinance to substitute, in the definition of "**law enforcement purpose**" in section 111(1) of the Law, the reference to "the security of the British Islands" with a reference to "national security". Paragraph (b)(ii) of these Amendments in turn inserts a definition of "**national security**" in section 111(1) of the Law that includes, for the avoidance of doubt, the security of both the British Islands and the British Overseas Territories.

Paragraph (c) of these Amendments makes three amendments to Schedule 2 to the Ordinance.

The first amendment effected by paragraph (c) of these Amendments amends paragraph 8 of Schedule 3 to the Law to make it clear that, when giving a fair processing notice, a controller is **not** required to specifically inform a data subject of intended transfers of personal data to a person located *within* the Bailiwick. This is consistent with the approach in Article 13(1)(f) of the GDPR, which simply requires notification of intended transfers to third countries and

international organisations.

The second amendment effected by paragraph (c) of these Amendments amends paragraph 13 of Schedule 3 to the Law so as **not** to require a controller, when giving a fair processing notice, to include information as to the rights of appeal under the Law. The reason is that neither Article 13(2) nor Article 14(2) of the GDPR requires such information to be given to the data subject.

The third amendment effected by paragraph (c) of these Amendments amends paragraph 6 of Schedule 5 to the Law so as **not** to require the rights of appeal under the Law to be specified in binding corporate rules to be approved by the Data Protection Authority. The reason is that Article 47(2)(e) of the GDPR does **not** require such matters to be specified in binding corporate rules, in order to be approved by the competent supervisory authority.

Paragraph (d) of these Amendments makes two amendments to Schedule 2 to the Ordinance.

The first amendment effected by paragraph (d) of these Amendments amends paragraph 1(7) of Schedule 7 to the Law, to ensure that legally privileged information is **not** required to be disclosed to the Data Protection Authority in response to an information notice issued by the Authority.

The second amendment effected by paragraph (d) of these Amendments amends paragraph 18(1) of Schedule 8 to the Law to substitute the reference to "the security of the British Islands" with a reference to "national security" (which is defined in the new definition inserted in section 111(1) of the Law, by paragraph (b)(ii) of these Amendments).