

Electoral System Referendum

Data protection guidance for campaign groups

June 2018

This guidance note is primarily for appointed campaign groups in the lead up to the referendum on the method of electing People’s Deputies to the States of Deliberation which will take place on 10th October, 2018.

The *Electoral System Referendum (Guernsey) Law, 2018* came into force on Monday 11th June, 2018. It is **strongly** recommended that all campaign groups familiarise themselves with this legislation. It is available for download from the States of Guernsey website at www.gov.gg on the ‘[States Meeting on 7 February 2018 \(Billets V, VI & VII\)](#)’ page or by clicking on the following link: [The-Electoral-System-Referendum-Guernsey-Law-2018](#).

This guidance note does not constitute legal advice. Its contents are believed to be accurate, but for the avoidance of doubt, in any case of disparity between this guidance note and the relevant statutory provisions, the relevant statutory provisions will prevail.

Contents

1. Introduction
2. Data Protection Duties
3. Additional Guidance
4. Key Points
5. Additional information

Other formats and further information

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1. Introduction

The Data Protection (Bailiwick of Guernsey) Law, 2017 (the 2017 Law) places duties and responsibilities on anybody handling personal data.

As the Referendum is the first referendum in Guernsey, it is certain that the Campaign Groups will be under intense media and public scrutiny in the period leading up to polling day on Wednesday 10th October 2018. It is therefore essential that all those involved with one of the official Campaign Groups understands their responsibilities under the 2017 Law, in addition to those set out in the Electoral System Referendum (Guernsey) Law, 2018 (the 2018 Law).

Campaign Groups are reminded that an individual's name and address, i.e. the information on the electoral roll, is personal data under the 2017 Law.

2. Data Protection Duties

One of the lead members for each Campaign Group must be designated as the data controller for the Group and the other members of the group, including any volunteers who will have access to the names and addresses on the electoral roll, will, under the 2017 Law, be a data processor.

In addition, you also need to be careful when handling personal data which you may collect via any website, Facebook page, other social media platform, etc. that you may set up to promote your campaign. Websites, etc. should include appropriate privacy notices and details of who to contact in relation to any data protection matters.

If a Campaign Group is inviting people to sign up to receive communications, etc. from them, they must ensure that any consent complies with the requirements of the 2017 Law and that those signing up are able to unsubscribe easily and understand by whom and for how long their data will be held.

The Campaign Groups are strongly advised to ensure that they understand their duties and responsibilities in respect of any personal data they may hold or process as part of their campaign. In this way, Campaign Groups should avoid, rather than risk the data protection legislation and have to respond to a complaint from somebody who believes the rights as a data subject have been breached.

If you are in any doubt about whether or not a particular campaign approach is likely to breach data protection laws or infringe of a voters right to privacy contact the Data Protection Commissioner before proceeding – better safe than sorry.

3. Additional Guidance

Prior to the EU Referendum in the UK, the UK's Information Commissioner issued detailed guidance to the various political parties and campaigning groups to remind them of their duties and responsibilities in respect of both data protection and electronic marketing rules when campaigning (ICO's [Guidance on Political Campaigning](#)).

In the context of the forthcoming Electoral Systems Referendum, much of the advice of the Information Commissioner is equally relevant to the Campaign Groups which will be appointed to promote the various options of the ballot paper. However, it should be noted that this guidance

pre-dates the introduction of the GDPR into UK legislation and so some aspects of the advice may need to be considered in light of the 2017 Law, i.e. the duties in respect of obtaining consent, etc.

It is accepted that communicating with voters is an important aspect of the democratic process. However, contacting an individual by text, phone call, email or fax to promote a political view in order to gain support at the ballot box is “direct marketing” and this is regulated under the 2017 Law. If a person or group fails to comply with the 2017 Law they may face enforcement action, including a possible fine, from the Data Protection Commissioner as well as reputational damage to their campaign.

4. Key Points

As the Campaign Groups prepare to engage with voters ahead of the referendum, the following key points from the Information Commissioner’s guidance will apply equally to them under the 2017 Law:

1. Only send emails and texts promoting your option to individuals who have consented or agreed to contact from your Campaign Group; e.g. you will need to distinguish between an email asking a particular question from another from someone asking you to keep them posted about any events, etc.; just because somebody emails you to ask when a particular event is taking place must not be interpreted as the person wanting you to email them again about future events, to remind them to vote, etc.
2. Don’t phone individuals if there are grounds for believing they would not want your Campaign Group to contact them; just because it isn’t too difficult in Guernsey to match names on the electoral role with those in the phone book, does not mean that you can start phoning people to canvass their vote etc.
3. Identify your Campaign Group in any communication and provide contact details to allow individuals to easily opt out of receiving any further information from you; if you opt to ask the Guernsey Post Office to deliver a leaflet to every residential address in Guernsey, this is not direct marketing as the leaflet will not contain any personal data.
4. When collecting information from individuals make sure you include clear and prominent privacy notices. These should tell people who you are and what you are going to do with their information. A template for a privacy notice is attached to this guidance note.
5. If you are compiling a database of supporters and potential supporters, you must ensure you treat individuals fairly, including only processing personal data in a way that an individual would expect.
6. You should carefully design any viral marketing processes to ensure that they comply with the consent requirements of the 2017 Law and assess the risk of distress that can come from misuse.
7. Any authorised Campaign Group should register with the Data Protection Commissioner if they are processing personal data. Information about registering with the DPC can be found on the DPC’s website www.dataci.gg.

5. Additional information

The Committee has published a “Frequently Asked Questions” document which will be updated regularly in the lead up to the referendum. It is available for download at www.gov.gg/referendum.

If you have any questions regarding the process, or require any further information, please contact the Lead Referendum Officer – Ms E Dene – on 717284 or Referendum@gov.gg.