

# ORDER IN COUNCIL

XXXII

1986

ratifying a Projet de Loi

ENTITLED

## **The Data Protection (Bailiwick of Guernsey) Law, 1986**

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(Registered on the Records of the Island of Guernsey  
on the 3rd March, 1987.)

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1986.

# ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 3rd day of March, 1987 before Graham Martyn Dorey, Esquire, Deputy Bailiff; present:—Donald Pescott Plummer, Brian Ernest Herbert Joy, Esquires, Charles Henry Hodder, Esquire, O.B.E., Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, John Christopher Bulstrode, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley and Leonard Arthur Moss, Esquires, Jurats.*

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 16th day of December, 1986 approving and ratifying a *Projet de Loi* entitled "The Data Protection (Bailiwick of Guernsey) Law 1986", the Court, after the reading of the said Order in Council and after having heard Her Majesty's Comptroller thereon, ordered that the said Order in Council be registered on the records of this Island and that an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty's Greffier to the Clerk of the Court of Alderney and to the SÉNÉSCHAL of Sark for registration on the records of those Islands respectively, of which Order in Council the tenor followeth:—

# At the Court at Buckingham Palace

The 16th day of December 1986

PRESENT,

## The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 10th day of December 1986 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth:—

‘1. That in pursuance of their Resolution of the 28th day of May 1986 the States of Deliberation at a meeting held on the 30th day of July 1986 approved a Bill or “Projet de Loi” entitled “The Data Protection (Bailiwick of Guernsey) Law, 1986”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the States of the Island of Alderney at a meeting held on the 3rd day of September 1986 considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Alderney. 3. That the Chief Pleas of the Island of Sark at a meeting held on the 1st day of October 1986 considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Sark. 4. That the

said Bill or "Projet de Loi" is as set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or "Projet de Loi" of the States of Guernsey entitled "the Data Protection (Bailiwick of Guernsey) Law, 1986", and to order that the same shall have force of law in the Bailiwick of Guernsey.'

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Bailiwick of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

*G. I. de Deney.*



# PROJET DE LOI

ENTITLED

## **The Data Protection (Bailiwick of Guernsey) Law, 1986**

### ARRANGEMENT OF SECTIONS

#### *Section*

#### PART I

#### PRELIMINARY

1. Definition of "data" and related expressions.
2. The data protection principles.

#### PART II

### REGISTRATION AND SUPERVISION OF DATA USERS AND COMPUTER BUREAUX

#### *Registration*

3. Registration of data users and computer bureaux.
4. Prohibition of unregistered holding etc. of personal data.
5. Applications for registration and for amendment of registered particulars.
6. Acceptance and refusal of applications.
7. Duration and renewal of registration.
8. Inspection etc. of registered particulars.

#### *Supervision*

9. Enforcement notices.
10. De-registration notices.
11. Transfer prohibition notices.

*Section**Appeals*

## 12. Appeals.

*Miscellaneous and supplementary*

- 13. Unauthorised disclosure by computer bureau.
- 14. Powers of entry and inspection.
- 15. Disclosure of information.
- 16. Service of notices.
- 17. Offences, penalties etc.
- 18. Liability of directors etc.

## PART III

## RIGHTS OF DATA SUBJECTS

- 19. Right of access to personal data.
- 20. Compensation for inaccuracy.
- 21. Compensation for loss or unauthorised disclosure.
- 22. Rectification and erasure.
- 23. Jurisdiction and procedure.

## PART IV

## EXEMPTIONS

- 24. Preliminary.
- 25. Public security.
- 26. Crime and taxation.
- 27. Health and social work.
- 28. Regulation of financial services etc.
- 29. Crown and judicial appointments and legal professional privilege.
- 30. Payrolls and accounts.
- 31. Domestic or other limited purposes.
- 32. Other exemptions.
- 33. Examination marks.

*Section*

## PART V

## GENERAL

34. General duties of Committee.
35. Co-operation between parties to Convention.
36. Application to States Committees.
37. Application to the police.
38. Data held, and services provided, outside the Bailiwick.
39. Power to amend Law.
40. Ordinances, Orders, Regulations and Rules.
41. General interpretation.
42. Commencement and transitional provisions.
43. Citation.

## SCHEDULES

SCHEDULE 1—The data protection principles.

SCHEDULE 2—Powers of entry and inspection.



# PROJET DE LOI

ENTITLED

## **The Data Protection (Bailiwick of Guernsey) Law, 1986**

THE STATES, in pursuance of their Resolution of the 28th day of May 1986, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### PART I

#### PRELIMINARY

Definition of  
"data" and  
related  
expressions.

1. (1) This section shall have effect for the interpretation of this Law.

(2) "Data" means information recorded in a form in which it can be processed by equipment operating automatically in response to instructions given for that purpose.

(3) "Personal data" means data consisting of information which relates to a living individual who can be identified from that information (or from that and other information in the possession of the data user), including any expression of opinion about the individual but not any indication of the intentions of the data user in respect of that individual.

(4) "Data subject" means an individual who is the subject of personal data.

(5) "Data user" means a person who holds data, and a person "holds" data if—

- (a) the data form part of a collection of data processed or intended to be processed by or on behalf of that person as mentioned in subsection (2); and
- (b) that person (either alone or jointly or in common with other persons) controls the contents and use of the data comprised in the collection; and
- (c) the data are in the form in which they have been or are intended to be processed as mentioned in paragraph (a) or (though not for the time being in that form) in a form into which they have been converted after being so processed and with a view to being further so processed on a subsequent occasion.

(6) A person carries on a " computer bureau " if he provides other persons with services in respect of data, and a person provides such services if—

- (a) as agent for other persons he causes data held by them to be processed as mentioned in subsection (2); or
- (b) he allows other persons the use of equipment in his possession for the processing as mentioned in that subsection of data held by them.

(7) " Processing ", in relation to data, means amending, augmenting, deleting or re-arranging the data or extracting the information constituting the data and, in the case of personal data, means performing any of those operations by reference to the data subject.

(8) Subsection (7) shall not be construed as applying to any operation performed only for the purpose of preparing the text of documents.

(9) "Disclosing", in relation to data, includes disclosing information extracted from the data; and where the identification of the individual who is the subject of personal data depends partly on the information constituting the data and partly on other information in the possession of the data user, the data shall not be regarded as disclosed or transferred unless the other information is also disclosed or transferred.

The data  
protection  
principles

2. (1) Subject to subsection (3), references in this Law to the "data protection principles" or to the "principles" are references to the principles set out in Part I of Schedule 1 to this Law; and those principles shall be interpreted in accordance with Part II of that Schedule.

(2) The first seven principles apply to personal data held by data users and the eighth applies both to such data and to personal data in respect of which services are provided by persons carrying on computer bureaux.

(3) The States may by Ordinance modify or supplement those principles for the purpose of providing additional safeguards in relation to personal data consisting of information as to—

- (a) the racial origin of the data subject;
- (b) his political opinions or religious or other beliefs;
- (c) his physical or mental health or his sexual life; or
- (d) his criminal convictions;

and references in this Law to the "data protection principles" or to the "principles" include, except where the context otherwise requires, references to any modified or additional principle having effect by virtue of an Ordinance under this subsection.

(4) An Ordinance under subsection (3) may modify a principle either by modifying the principle itself or by modifying its interpretation; and where an Ordinance under that subsection modifies a principle or provides for an additional principle it may contain provisions for the interpretation of the modified or additional principle.

(5) An Ordinance under subsection (3) modifying the third data protection principle may, to such extent as the States consider appropriate, exclude or modify in relation to that principle any exemption from the non-disclosure provisions which is contained in Part IV of this Law; and the exemptions from those provisions contained in that Part shall accordingly have effect subject to any Ordinance made by virtue of this subsection.

## PART II

### REGISTRATION AND SUPERVISION OF DATA USERS AND COMPUTER BUREAUX

#### *Registration*

3. (1) The Committee shall maintain a register of data users who hold, and of persons carrying on computer bureaux who provide services in respect of, personal data, and shall make an entry in the register in pursuance of each application for registration accepted under this Part of this Law.

Registration  
of data users  
and  
computer  
bureaux.

(2) Each entry shall state whether it is in respect of a data user, of a person carrying on a computer bureau or of a data user who also carries on such a bureau.

(3) Subject to the provisions of this section, an entry in respect of a data user shall consist of the following particulars—

- (a) the name of the data user and his address in the Bailiwick;
- (b) a description of the personal data to be held by him and of the purpose or purposes for which the data are to be held or used;
- (c) a description of the source or sources from which he intends or may wish to obtain the data or the information to be contained in the data;
- (d) a description of any person or persons to whom he intends or may wish to disclose the data;
- (e) the names or a description of any countries or territories outside the Bailiwick to which he intends or may wish directly or indirectly to transfer the data; and
- (f) one or more addresses in the Bailiwick for the receipt of requests from data subjects for access to the data.

(4) Subject to the provisions of this section, an entry in respect of a person carrying on a computer bureau shall consist of that person's name and his address in the Bailiwick.

(5) Subject to the provisions of this section, an entry in respect of a data user who also carries on a computer bureau shall consist of his name and his address in the Bailiwick and, as respects the personal data to be held by him, the particulars specified in paragraphs (b) to (f) of subsection (3).

(6) In the case of a Bailiwick registered company the address referred to in subsections (3)(a), (4) and (5) is that of its registered office.

(7) In the case of a person (other than a Bailiwick registered company) carrying on business in the Bailiwick the address referred to in subsections (3)(a), (4) and (5) is that of his principal place of business in the Bailiwick.

(8) The Committee may by order vary the particulars to be included in entries made in the register.

4. (1) A person shall not hold personal data unless an entry in respect of that person as a data user, or as a data user who also carries on a computer bureau, is for the time being contained in the register.

Prohibition  
of  
unregistered  
holding etc.  
of personal  
data.

(2) A person in respect of whom such an entry is contained in the register shall not—

- (a) hold personal data of any description other than that specified in the entry;
- (b) hold any such data, or use any such data held by him, for any purpose other than the purpose or purposes described in the entry;
- (c) obtain such data, or information to be contained in such data, to be held by him from any source which is not described in the entry;

- (d) disclose such data held by him to any person who is not described in the entry; or
- (e) directly or indirectly transfer such data held by him to any country or territory outside the Bailiwick other than one named or described in the entry.

(3) A servant or agent of a person to whom subsection (2) applies shall, as respects personal data held by that person, be subject to the same restrictions on the use, disclosure and transfer of the data as those to which that person is subject under paragraphs (b), (d) and (e) of that subsection and, as respects personal data to be held by that person, to the same restrictions as those to which he is subject under paragraph (c) of that subsection.

(4) A person shall not, in carrying on a computer bureau, provide services in respect of personal data unless an entry in respect of that person as a person carrying on such a bureau, or as a data user who also carries on such a bureau, is for the time being contained in the register.

Applications  
for  
registration  
and for  
amendment  
of registered  
particulars.

5. (1) A person applying for registration shall state whether he wishes to be registered as a data user, as a person carrying on a computer bureau or as a data user who also carries on such a bureau, and shall furnish the Committee, in such form as the Committee may require, with the particulars required to be included in the entry to be made in pursuance of the application.

(2) Where a person intends to hold personal data for two or more purposes he may make separate applications for registration in respect of any of those purposes.

(3) A registered person may at any time apply to the Committee for the alteration of any particulars included in the entry or entries relating to that person.

(4) Where the alteration would consist of the addition of a purpose for which personal data are to be held, the person may, instead of making an application under subsection (3), make a fresh application for registration in respect of the additional purpose.

(5) A registered person shall make an application under subsection (3) whenever necessary for ensuring that the entry or entries relating to that person contain his current address in the Bailiwick.

(6) Every application for registration shall be accompanied by the prescribed fee, and every application for the alteration of registered particulars shall be accompanied by such fee, if any, as may be prescribed.

(7) Any application for registration or for the alteration of registered particulars may be withdrawn by notice in writing to the Committee at any time before the applicant receives a notification in respect of the application under section 6(1).

6. (1) Subject to the provisions of this section, the Committee shall, as soon as practicable and in any case within the period of six months after receiving an application for registration or for the alteration of registered particulars, serve on the applicant notification in writing stating whether his application has been accepted or refused; and where the Committee notifies an applicant that his application has been accepted the notification shall contain a statement of—

Acceptance  
and refusal  
of  
applications.



- (a) the particulars entered in the register, or the alteration made, in pursuance of the application; and
- (b) the date on which the particulars were entered or the alteration was made.

(2) The Committee shall not refuse an application made in accordance with section 5 unless the Committee—

- (a) considers that the particulars proposed for registration or, as the case may be, the particulars that would result from the proposed alteration, will not give sufficient information as to the matters to which they relate; or
- (b) considers, in any case of separate applications under section 5(2) or of a fresh application under section 5(4), that it would be more appropriate for the particulars proposed for registration to be included in another entry made or to be made in respect of the applicant; or
- (c) is not satisfied, on the information available to it, that the applicant is unlikely to contravene any of the data protection principles.

(3) Subsection (2)(a) shall not be construed as precluding the acceptance by the Committee of particulars expressed in general terms in cases where that is appropriate, and the Committee shall accept particulars expressed in such terms in any case in which it is satisfied that more specific particulars would be likely to prejudice the purpose or purposes for which the data are to be held.

(4) Where the Committee refuses an application under this section the Committee shall inform the applicant of the reasons for its refusal and of the rights of appeal conferred by section 12.

(5) If in any case it appears to the Committee that an application needs more consideration than can be given to it in the period mentioned in subsection (1) it shall, as soon as practicable and in any case before the end of that period, notify the applicant in writing to that effect; and in that event no notification need be given under that subsection until after the end of that period.

(6) Subject to subsection (8), a person who has made an application in accordance with section 5 shall—

- (a) until he receives a notification in respect of it under subsection (1) of this section or the application is withdrawn; and
- (b) if he receives a notification under that subsection of the refusal of his application, until the end of the period within which an appeal can be brought against the refusal and, if an appeal is brought, until the determination or withdrawal of the appeal,

be treated for the purposes of section 4 as if his application had been accepted and the particulars contained in it had been entered in the register or, as the case may be, the alteration requested in the application had been made on the date on which the application was made.

(7) If by reason of special circumstances the Committee considers that a refusal notified to an applicant under subsection (1) should take effect as

a matter of urgency the Committee may include a statement to that effect in the notification of the refusal; and in that event subsection (6)(b) shall have effect as if for the words from "the period" onwards there were substituted the words "the period of seven days beginning with the date on which that notification is received".

(8) Subject to the provisions of this subsection, subsection (6) shall not apply to an application made by any person if in the previous two years—

- (a) an application by that person has been refused under this section; or
- (b) all or any of the particulars constituting an entry contained in the register in respect of that person have been removed in pursuance of a de-registration notice;

but in the case of any such application subsection (1) shall apply as if for the reference to six months there were substituted a reference to two months and, where the Committee gives a notification under subsection (5) in respect of any such application, subsection (6) shall apply to it as if for the reference to the date on which the application was made there were substituted a reference to the date on which that notification is received.

(9) For the purposes of subsection (6) an application shall be treated as made or withdrawn—

- (a) if the application or notice of withdrawal is sent by registered post or the recorded delivery service, on the date on which it is received for dispatch by the States Post Office Board;

- (b) in any other case, on the date on which it is received by the Committee;

and for the purposes of subsection (8)(a) an application shall not be treated as having been refused so long as an appeal against the refusal can be brought, while such an appeal is pending or if such an appeal has been allowed.

7. (1) No entry shall be retained in the register after the expiration of the initial period of registration except in pursuance of a renewal application made to the Committee in accordance with this section. Duration  
and renewal  
of  
registration.

- (2) Subject to subsection (3)—

- (a) the initial period of registration shall be three years, or such shorter period as may be prescribed, beginning with whichever is the later of—

- (i) the date of commencement of section 4;
- (ii) the date on which the entry in question is made;

- (b) the period for which an entry is to be retained in pursuance of a renewal application ("the renewal period") shall be three years, or such shorter period as may be prescribed, beginning with the date on which the entry would fall to be removed if the renewal application had not been made.

(3) The person making an application for registration or a renewal application may in his application specify as the initial period of registration or, as the case may be, as the renewal period, a period shorter than that prescribed, being a period consisting of one or more complete years.

(4) Where the Committee notifies an applicant for registration that his application has been accepted the notification shall include a statement of the date when the initial period of registration will expire.

(5) Every renewal application shall be accompanied by the prescribed fee, and no such application shall be made except in the period of six months ending with the expiration of—

- (a) the initial period of registration; or
- (b) if there have been one or more previous renewal applications, the current renewal period.

(6) Any renewal application may be sent by post, and the Committee shall acknowledge its receipt and notify the applicant in writing of the date until which the entry in question will be retained in the register in pursuance of the application.

(7) Without prejudice to the foregoing provisions of this section, the Committee may at any time remove an entry from the register at the request of the person to whom the entry relates.

Inspection  
etc. of  
registered  
particulars.

8. (1) The Committee shall transmit to Her Majesty's Greffier the information contained in the entries in the register; and the information so transmitted shall, at all times when the Greffe is required under the law for the time being in force to be open, be available there for public inspection (in visible and legible form) free of charge.

(2) Her Majesty's Greffier shall, on payment to him of such fee, if any, as may be prescribed, supply

to any member of the public a duly certified copy in writing of the particulars contained in the entry made in the register in pursuance of any application for registration.

### *Supervision*

9. (1) If the Committee is satisfied that a registered person has contravened or is contravening any of the data protection principles the Committee may serve on him a notice ("an enforcement notice") requiring him to take, within such time as is specified in the notice, such steps as are so specified for complying with the principle or principles in question.

Enforcement  
notices.

(2) In deciding whether to serve an enforcement notice the Committee shall consider whether the contravention has caused or is likely to cause any person damage or distress.

(3) An enforcement notice in respect of a contravention of the fifth data protection principle may require the data user—

- (a) to rectify or erase the data and any other data held by him and containing an expression of opinion which appears to the Committee to be based on the inaccurate data; or
- (b) in the case of such data as are mentioned in subsection (2) of section 20, either to take the steps mentioned in paragraph (a) of this subsection or to take such steps as are specified in the notice for securing compliance with the requirements specified in that subsection and, if the Committee thinks fit, for supplementing the data with

such statement of the true facts relating to the matters dealt with by the data as the Committee may approve.

(4) The Committee shall not serve an enforcement notice requiring the person served with the notice to take steps for complying with paragraph (a) of the seventh data protection principle in respect of any data subject unless satisfied that the person has contravened section 19 by failing to supply information to which the data subject is entitled and which has been duly requested in accordance with that section.

(5) An enforcement notice shall contain—

(a) a statement of the principle or principles which the Committee is satisfied have been or are being contravened and the Committee's reasons for reaching that conclusion; and

(b) particulars of the rights of appeal conferred by section 12.

(6) Subject to subsection (7), the time specified in an enforcement notice for taking the steps which it requires shall not expire before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, those steps need not be taken pending the determination or withdrawal of the appeal.

(7) If by reason of special circumstances the Committee considers that the steps required by an enforcement notice should be taken as a matter of urgency the Committee may include a statement to that effect in the notice; and in that event subsec-

tion (6) shall not apply but the notice shall not require the steps to be taken before the end of the period of seven days beginning with the date on which the notice is served.

(8) The Committee may cancel an enforcement notice by written notification to the person on whom it was served.

10. (1) If the Committee is satisfied that a registered person has contravened or is contravening any of the data protection principles the Committee may—

De-registration  
notices.

- (a) serve on him a notice (“a de-registration notice”) stating that the Committee proposes, at the expiration of such period as is specified in the notice, to remove from the register all or any of the particulars constituting the entry or any of the entries contained in the register in respect of that person; and
- (b) subject to the provisions of this section, remove those particulars from the register at the expiration of that period.

(2) In deciding whether to serve a de-registration notice the Committee shall consider whether the contravention has caused or is likely to cause any person damage or distress, and the Committee shall not serve such a notice unless satisfied that compliance with the principle or principles in question cannot be adequately secured by the service of an enforcement notice.

(3) A de-registration notice shall contain—

- (a) a statement of the principle or principles which the Committee is satisfied have been



or are being contravened and the Committee's reasons for reaching that conclusion and deciding that compliance cannot be adequately secured by the service of an enforcement notice; and

- (b) particulars of the rights of appeal conferred by section 12.

(4) Subject to subsection (5), the period specified in a de-registration notice pursuant to subsection (1)(a) shall not expire before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the particulars shall not be removed pending the determination or withdrawal of the appeal.

(5) If by reason of special circumstances the Committee considers that any particulars should be removed from the register as a matter of urgency the Committee may include a statement to that effect in the de-registration notice; and in that event subsection (4) shall not apply but the particulars shall not be removed before the end of the period of seven days beginning with the date on which the notice is served.

(6) The Committee may cancel a de-registration notice by written notification to the person on whom it was served.

(7) References in this section to removing any particulars include references to restricting any description which forms part of any particulars.

Transfer  
prohibition  
notices.

11. (1) If it appears to the Committee that—

- (a) a person registered as a data user or as a data user who also carries on a computer bureau; or

- (b) a person treated as so registered by virtue of section 6(6),

proposes to transfer personal data held by him to a place outside the Bailiwick, the Committee may, if satisfied as to the matters mentioned in subsection (2) or (3), serve on that person a notice ("a transfer prohibition notice") prohibiting him from transferring the data either absolutely or until he has taken such steps as are specified in the notice for protecting the interests of the data subjects in question.

(2) Where the place to which the data are to be transferred is not in a State bound by the European Convention the Committee must be satisfied that the transfer is likely to contravene, or lead to a contravention of, any of the data protection principles.

(3) Where the place to which the data are to be transferred is in a State bound by the European Convention the Committee must be satisfied either—

(a) that—

- (i) the person in question intends to give instructions for the further transfer of the data to a place which is not in such a State; and
- (ii) that the further transfer is likely to contravene, or lead to a contravention of, any of the data protection principles; or

(b) in the case of data to which an order under section 2(3) applies, that the transfer is likely to contravene or lead to a contravention of, any of the data protection principles as they have effect in relation to such data.

(4) In deciding whether to serve a transfer prohibition notice the Committee shall consider whether the notice is required for preventing damage or distress to any person and shall have regard to the general desirability of facilitating the free transfer of data between the Bailiwick and other territories and States.

(5) A transfer prohibition notice shall specify the time when it is to take effect and contain—

- (a) a statement of the principle or principles which the Committee is satisfied are likely to be contravened and the Committee's reasons for reaching that conclusion; and
- (b) particulars of the rights of appeal conferred by section 12.

(6) Subject to subsection (7), the time specified in a transfer prohibition notice pursuant to subsection (5) shall not be before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the notice shall not take effect pending the determination or withdrawal of the appeal.

(7) If by reason of special circumstances the Committee considers that the prohibition should take effect as a matter of urgency the Committee may include a statement to that effect in the transfer prohibition notice; and in that event subsection (6) shall not apply but the notice shall not take effect before the end of the period of seven days beginning with the date on which the notice is served.

(8) The Committee may cancel a transfer prohibition notice by written notification to the person on whom it was served.

(9) Nothing in this section shall be construed as empowering the Committee to serve a transfer prohibition notice purporting to prohibit the transfer of any data if the transfer of the information constituting that data is—

- (a) required or authorised under any enactment for the time being in force in any part of the Bailiwick; or
- (b) required by any convention or other instrument for the time being imposing an international obligation on the Bailiwick or on Her Majesty's Government in the United Kingdom in relation to the Bailiwick.

(10) For the purposes of this section a place shall be treated as in a State bound by the European Convention if it is in any territory in respect of which the State is bound.

### *Appeals*

12. (1) A person aggrieved by a decision of the Appeals Committee—

- (a) to refuse an application for registration or for the alteration of registered particulars;
- (b) to serve an enforcement notice, a de-registration notice or a transfer prohibition notice;
- (c) to include in a notification pursuant to section 6(1) a statement in accordance with section 6(7);
- (d) to include in an enforcement notice, a de-registration notice or a transfer prohibition notice a statement in accordance with section 9(7), 10(5) or 11(7) as the case may be,

may appeal to the Royal Court against that decision on the grounds that it was *ultra vires* or was an unreasonable exercise of discretion.

(2) An appeal under subsection (1) shall be instituted by way of summons which shall set out the grounds and the material facts on which the appellant relies and shall be served on the President of the Committee within three weeks of the service of the notification or notice served pursuant to the decision appealed against.

(3) On an appeal under subsection (1) the Royal Court may review any determination of fact on which the refusal, notice or statement was based, and may, as well as allowing or dismissing the appeal,—

- (a) in the case of an appeal under paragraph (a) of subsection (1), substitute any other decision which the Committee could have made;
- (b) in the case of an appeal under paragraph (b) of subsection (1), substitute any other notice which the Committee could have served;
- (c) in the case of an appeal under paragraph (c) of subsection (1), direct that the notification pursuant to section 6(1) shall be treated as if it did not contain any statement in accordance with section 6(7);
- (d) in the case of an appeal under paragraph (d) of subsection (1), direct that the notice in question shall have effect as if it did not contain any such statement as is mentioned in that subsection or that the inclusion of the statement shall not have effect

in relation to any part of the notice, and may make such modifications in the notice as may be required for giving effect to the direction.

(4) The Royal Court may, by Order, make rules for regulating, subject to the provisions of this section, the exercise of the rights of appeal conferred by this section.

(5) An appeal on a question of law shall lie to the Court of Appeal from any decision of the Royal Court under this section within such period and in such manner as the Royal Court may, from time to time, specify by Order; and an appeal shall not, for any of the purposes of this Law, be deemed to have been determined or withdrawn until the expiration of any period which is so specified.

*Miscellaneous and supplementary*

13. (1) Personal data in respect of which services are provided by a person carrying on a computer bureau shall not be disclosed by him without the prior authority of the person for whom those services are provided.

Unauthorised disclosure by computer bureau.

(2) Subsection (1) applies also to any servant or agent of a person carrying on a computer bureau.

14. Schedule 2 to this Law shall have effect for the detection of—

Powers of entry and inspection.

(a) offences under this Act;

(b) contraventions of the data protection principles.

**Disclosure of information.**

15. (1) Subject to subsection (2), information disclosed to the Committee or to any officer of the Committee in connection with the operation of this Law shall not be further disclosed except to a person for the time being authorised to carry out any functions in connection with the operation of this Law.

(2) Nothing in this section or in any other enactment or rule for the time being having force of law in any part of the Bailiwick shall be construed as precluding any person—

- (a) from furnishing the Committee or the Royal Court with any information necessary for the discharge of their respective functions under this Law;
- (b) from disclosing information for the purpose of performing his functions under this Law or for the purpose of any civil or criminal proceedings under, or arising out of, this Law.

**Service of notices.**

16. (1) Any notice or notification authorised or required by this Law to be served on or given to any person by the Committee may, without prejudice to any other lawful method of serving or giving a notice or notification,—

- (a) if that person is an individual, be served on him—
  - (i) by delivering it to him; or
  - (ii) by sending it to him by post addressed to him at his usual or last-known place of residence or business; or
  - (iii) by leaving it for him at that place;

- (b) if that person is a body corporate or unincorporate, be served on that body—
  - (i) by sending it by post to the proper officer of the body at its principal office; or
  - (ii) by addressing it to the proper officer of the body and leaving it at that office;
- (c) if that person is a registered person (whether an individual or a body corporate or unincorporate) by sending it by post to, or by leaving it at, his address entered in the register pursuant to section 3(3)(a).

(2) In subsection (1)(b) “principal office”, in relation to a registered company, means its registered office and “proper officer”, in relation to any body, means the secretary or other executive officer charged with the conduct of its general affairs.

(3) Any application or notice authorised or required by this Law to be given to the Committee may be given—

- (a) by sending it by post to the President of the Committee at the office of the Committee; or
  - (b) by addressing it to the President of the Committee and leaving it at that office;
- and, subject to section 6(9)(a), an application or notice shall be treated as received by the Committee when it is received or left at that office.

17. (1) A person who—

- (a) holds personal data in contravention of section 4(1); or

Offences,  
penalties,  
etc.



- (b) knowingly or recklessly contravenes any provision of section 4(2), 4(3) or 4(4); or
- (c) fails to make an application under section 5(3) when required to do so by virtue of section 5(5); or
- (d) fails to comply with an enforcement notice; or
- (e) contravenes a transfer prohibition notice; or
- (f) knowingly or recklessly discloses personal data in contravention of section 13,

shall be guilty of an offence and liable, on conviction, to a fine.

(2) It shall be a defence for a person charged with an offence under paragraph (d) or paragraph (e) of subsection (1) to prove that he exercised all due diligence to comply with or, as the case may be, to avoid a contravention of, the notice in question.

(3) Subject to subsection (4), the court by which a person is convicted of an offence under subsection (1) (other than offence under paragraph (c) of that subsection) may order any data material appearing to the court to be connected with the commission of the offence to be forfeited, destroyed or erased.

(4) The court shall not make an order under subsection (3) in relation to any material where a person (other than the offender) claiming to be the owner or otherwise interested in it applies to be heard by the court unless an opportunity is given to him to show cause why the order should not be made.

(5) A person who—

- (a) in connection with an application for registration or for the alteration of registered particulars, knowingly or recklessly furnishes the Committee with information which is false or misleading in a material particular; or
- (b) knowingly or recklessly discloses information in contravention of section 15; or
- (c) intentionally obstructs a person in the execution of a warrant issued under Schedule 2; or
- (d) fails without reasonable excuse to give to a person executing such a warrant such assistance as that person reasonably requires for its execution,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £500.

18. (1) Where an offence under this Law committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

Liability of  
directors  
etc.

(2) Where the affairs of a body corporate are managed by its members subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate; and for

the purposes of this section a person shall be deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of the body corporate or any of them act.

### PART III

#### RIGHTS OF DATA SUBJECTS

Right of  
access to  
personal  
data.

19. (1) Subject to the provisions of this section, an individual shall be entitled—

- (a) to be informed by any data user whether the data held by him include personal data of which that individual is the data subject; and
- (b) to be supplied by any data user with a copy of the information constituting any such personal data held by him;

and where any of the information referred to in paragraph (b) is expressed in terms which are not intelligible without explanation the information shall be accompanied by an explanation of those terms.

(2) A data user shall not be obliged to supply any information under subsection (1) except in response to a request in writing and on payment of such fee (not exceeding the prescribed maximum) as he may require; but a request for information under both paragraphs of that subsection shall be treated as a single request and a request for information under paragraph (a) shall, in the absence of any indication to the contrary, be treated as extending also to information under paragraph (b).

(3) In the case of a data user having separate entries in the register in respect of data held for different purposes a separate request must be made and a separate fee paid under this section in respect of the data to which each entry relates.

(4) A data user shall not be obliged to comply with a request under this section—

- (a) unless he is supplied with such information as he may reasonably require in order to satisfy himself as to the identity of the person making the request and to locate the information which that person seeks; and
- (b) if he cannot comply with the request without disclosing information relating to another individual who can be identified from that information, unless he is satisfied that the other individual has consented to the disclosure of the information to the person making the request.

(5) In paragraph (b) of subsection (4) the reference to information relating to another individual includes a reference to information identifying that individual as the source of the information sought by the request; and that paragraph shall not be construed as excusing a data user from supplying so much of the information sought by the request as can be supplied without disclosing the identity of the other individual concerned, whether by the omission of names or other identifying particulars or otherwise.

(6) A data user shall comply with a request under this section within 40 days of receiving the request or, if later, within 40 days of receiving the

information referred to in paragraph (a) of subsection (4) and, in a case where it is required, the consent referred to in paragraph (b) of that subsection.

(7) The information to be supplied pursuant to a request under this section shall be supplied by reference to the data in question at the time when the request is received except that it may take account of any amendment or deletion made between that time and the time when the information is supplied, being an amendment or deletion that would have been made regardless of the receipt of the request.

(8) If a court is satisfied on the application of any person who has made a request under the foregoing provisions of this section that the data user in question has failed to comply with the request in contravention of those provisions, the court may order him to comply with the request; but a court shall not make an order under this subsection if it considers that it would in all the circumstances be unreasonable to do so, whether because of the frequency with which the applicant has made requests to the data user under those provisions or for any other reason.

(9) A person appointed under any rule of customary law to act as guardian to an individual suffering from mental disorder may exercise any of the rights of that individual under this section on his behalf; and the States may by Ordinance provide for enabling a request under this section to be made on behalf of any such individual in respect of whom no guardian has been so appointed.

20. (1) An individual who is the subject of personal data held by a data user and who suffers damage by reason of the inaccuracy of the data shall be entitled to compensation from the data user for that damage and for any distress which the individual has suffered by reason of the inaccuracy. Compensation for inaccuracy.

(2) In the case of data which accurately record information received or obtained by the data user from the data subject or a third party, subsection (1) does not apply if the following requirements have been complied with—

- (a) the data indicate that the information was received or obtained as aforesaid or the information has not been extracted from the data except in a form which includes an indication to that effect; and
- (b) if the data subject has notified the data user that he regards the information as incorrect or misleading, an indication to that effect has been included in the data or the information has not been extracted from the data except in a form which includes an indication to that effect.

(3) In proceedings brought against any person by virtue of this section it shall be a defence to prove that he had taken such care as in all the circumstances was reasonably required to ensure the accuracy of the data at the material time.

(4) Data are inaccurate for the purposes of this section if incorrect or misleading as to any matter of fact.

Compensation for loss or unauthorised disclosure.

21. (1) An individual who is the subject of personal data held by a data user, or in respect of which services are provided by a person carrying on a computer bureau, and who suffers damage by reason of—

- (a) the loss of the data;
- (b) the destruction of the data without the authority of the data user or, as the case may be, of the person carrying on the bureau; or
- (c) subject to subsection (2), the disclosure of the data, or access having been obtained to the data, without such authority as aforesaid,

shall be entitled to compensation from the data user or, as the case may be, the person carrying on the bureau for that damage and for any distress which the individual has suffered by reason of the loss, destruction, disclosure or access.

(2) In the case of a registered data user, subsection (1)(c) does not apply to disclosure to, or access by, any person falling within a description specified pursuant to section 3(3)(d) in an entry in the register relating to that data user.

(3) In proceedings brought against any person by virtue of this section it shall be a defence to prove that he had taken such care as in all the circumstances was reasonably required to prevent the loss, destruction, disclosure or access in question.

Rectification and erasure.

22. (1) If a court is satisfied on the application of a data subject that personal data held by a data user of which the applicant is the subject are inaccurate

within the meaning of section 20, the court may order the rectification or erasure of the data and of any data held by the data user and containing an expression of opinion which appears to the court to be based on the inaccurate data.

(2) Subsection (1) applies whether or not the data accurately record information received or obtained by the data user from the data subject or a third party but where the data accurately record such information, then—

(a) if the requirements mentioned in section 20(2) have been complied with, the court may, instead of making an order under subsection (1) of this section, make an order requiring the data to be supplemented by such statement of the true facts relating to the matters dealt with by the data as the court may approve; and

(b) if all or any of those requirements have not been complied with, the court may, instead of making an order under that subsection, make such order as it thinks fit for securing compliance with those requirements with or without a further order requiring the data to be supplemented by such a statement as is mentioned in paragraph (a).

(3) If a court is satisfied on the application of a data subject—

(a) that he has suffered damage by reason of the disclosure of personal data, or of access having been obtained to personal data, in circumstances entitling him to compensation under section 21; and



- (b) that there is a substantial risk of further disclosure of, or access to, the data without such authority as is mentioned in that section,

the court may order the erasure of the data; but, in the case of data in respect of which services were being provided by a person carrying on a computer bureau, the court shall not make such an order unless such steps as are reasonably practicable have been taken for notifying the person for whom those services were provided and giving him an opportunity to be heard.

Jurisdiction  
and  
procedure.

23. (1) The jurisdiction conferred by this Part of this Law shall be exercisable—

- (a) if the data user, or the person carrying on the computer bureau, concerned is a registered person—
  - (i) if his address entered in the register pursuant to section 3(3)(a) is in Guernsey, by the Royal Court sitting as an Ordinary Court;
  - (ii) if his address so entered is in Alderney, by the Court of Alderney;
  - (iii) if his address so entered is in Sark, by the Court of the Seneschal of Sark;
- (b) in any other case—
  - (i) if the personal data in question are held in Guernsey, by the Royal Court sitting as an Ordinary Court;
  - (ii) if the personal data in question are held in Alderney, by the Court of Alderney;

- (iii) if the personal data in question are held in Sark, by the Court of the Seneschal of Sark.

(2) For the purpose of determining any question whether an applicant under section 19(8) is entitled to the information which he seeks (including any question whether any relevant data are exempt from that section by virtue of Part IV of this Law) a court may require the information constituting any data held by the data user to be made available for its own inspection but shall not, pending the determination of that question in the applicant's favour, require the information sought by the applicant to be disclosed to him or his representatives.

## PART IV

### EXEMPTIONS

24. (1) References in any provision of Part II or Preliminary. III of this Law to personal data do not include references to data which by virtue of this Part of this Law are exempt from that provision.

(2) In this Part of this Law "the subject access provisions" means—

- (a) section 19; and
- (b) any provision of Part II of this Law conferring a power on the Committee to the extent to which it is exercisable by reference to paragraph (a) of the seventh data protection principle.

(3) In this Part of this Law "the non-disclosure provisions" means—

- (a) sections 4(2)(d) and 13; and
- (b) any provision of Part II of this Law conferring a power on the Committee to the extent to which it is exercisable by reference to any data protection principle inconsistent with the disclosure in question.

(4) Except as provided by this Part of this Law the subject access provisions shall apply notwithstanding any enactment or rule of law prohibiting or restricting the disclosure, or authorising the withholding, of information.

**Public  
security.**

25. (1) Personal data are exempt from the provisions of Part II of this Law and of sections 19 to 22 if the exemption is required for the purpose of safeguarding the security of any part of the British Islands.

(2) Any question whether the exemption mentioned in subsection (1) is or at any time was required for the purpose there mentioned in respect of any personal data shall be determined by the Bailiff; and a certificate signed by the Bailiff certifying that the exemption is or at any time was so required shall be conclusive evidence of that fact.

(3) Personal data which are not exempt under subsection (1) are exempt from the non-disclosure provisions in any case in which the disclosure of the data is for the purpose of safeguarding the security of any part of the British Islands.

(4) For the purposes of subsection (3) a certificate signed by the Bailiff certifying that personal data are or have been disclosed for the purpose mentioned in that subsection shall be conclusive evidence of that fact.

26. (1) Personal data held for any of the following purposes— Crime and  
taxation.

- (a) the prevention or detection of crime;
- (b) the apprehension or prosecution of offenders;  
or
- (c) the assessment or collection of any tax or  
duty,

are exempt from the subject access provisions in any case in which the application of those provisions to the data would be likely to prejudice any of the matters mentioned in this subsection.

(2) Personal data which—

- (a) are held for the purpose of discharging statutory functions; and
- (b) consist of information obtained for such a purpose from a person who had it in his possession for any of the purposes mentioned in subsection (1),

are exempt from the subject access provisions to the same extent as personal data held for any of the purposes mentioned in that subsection.

(3) Personal data are exempt from the non-disclosure provisions in any case in which—

- (a) the disclosure is for any of the purposes mentioned in subsection (1); and
- (b) the application of those provisions in relation to the disclosure would be likely to prejudice any of the matters mentioned in that subsection;

and in proceedings against any person for contravening a provision mentioned in section 24(3)(a) it shall be a defence to prove that he had reasonable grounds for believing that failure to make the disclosure in question would have been likely to prejudice any of those matters.

(4) Personal data are exempt from the provisions of Part II of this Law conferring powers on the Committee, to the extent to which they are exercisable by reference to the first data protection principle, in any case in which the application of those provisions to the data would be likely to prejudice any of the matters mentioned in subsection (1) of this section.

Health and  
social work.

27. (1) The States may by Ordinance exempt from the subject access provisions, or modify those provisions in relation to, personal data consisting of information as to the physical or mental health of the data subject.

(2) The States may by Ordinance exempt from the subject access provisions, or modify those provisions in relation to, personal data of such other descriptions as may be specified in the Ordinance, being information—

- (a) held by persons or bodies specified in the Ordinance; and
- (b) appearing to the States to be held for, or acquired in the course of, carrying out social work in relation to the data subject or other individuals,

to the extent that it appears to the States that the application to the data of those provisions (or of those provisions without modification) would be likely to prejudice the carrying out of social work.

28. (1) Personal data held for the purpose of discharging statutory functions to which this section applies are exempt from the subject access provisions in any case in which the application of those provisions to the data would be likely to prejudice the proper discharge of those functions.

Regulation  
of financial  
services etc.

(2) This section applies to any functions designated for the purposes of this section by an Ordinance of the States, being functions conferred by or under any enactment appearing to the States to be 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 persons who are or have been insolvent.

29. (1) Personal data held on behalf of the Crown or by any Crown Officer are exempt from the subject access provisions if the data consist of information which has been received from a third party and is held as information relevant to the making of Crown or judicial appointments.

Crown and  
judicial  
appoint-  
ments and  
legal pro-  
fessional  
privilege.

(2) Personal data are exempt from the subject access provisions if the data consist of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

30. (1) Subject to subsection (2), personal data held by a data user only for one or more of the following purposes—

Payrolls and  
accounts.

(a) calculating amounts payable by way of remuneration or pensions in respect of service in any employment or office or making payments of, or of sums deducted from, such remuneration or pensions; or

- (b) keeping accounts relating to any business or other activity carried on by the data user or keeping records of purchases, sales or other transactions for the purpose of ensuring that the requisite payments are made by or to him in respect of those transactions or for the purpose of making financial or management forecasts to assist him in the conduct of any such business or activity,

are exempt from the provisions of Part II of this Law and of sections 19 to 22.

(2) It shall be a condition of the exemption of any data under this section that the data are not used for any purpose other than the purpose or purposes for which they are held and are not disclosed except as permitted by subsections (3) and (4); but the exemption shall not be lost by any use or disclosure in breach of that condition if the data user shows that he had taken such care to prevent it as in all the circumstances was reasonably required.

(3) Data held only for one or more of the purposes mentioned in subsection (1)(a) may be disclosed—

- (a) to any person, other than the data user, by whom the remuneration or pensions in question are payable;
- (b) for the purpose of obtaining actuarial advice;
- (c) for the purpose of giving information as to the persons in any employment or office for use in medical research into the health of, or injuries suffered by, persons engaged in particular occupations or working in particular places or areas;

- (d) if the data subject (or a person acting on his behalf) has requested or consented to the disclosure of the data either generally or in the circumstances in which the disclosure in question is made; or
- (e) if the person making the disclosure has reasonable grounds for believing that the disclosure falls within paragraph (d).

(4) Data held for any of the purposes mentioned in subsection (1) may be disclosed—

- (a) for the purpose of audit or where the disclosure is for the purpose only of giving information about the data user's financial affairs; or
- (b) in any case in which disclosure would be permitted by any other provision of this Part of this Law if subsection (2) were included among the non-disclosure provisions.

(5) In this section “remuneration” includes remuneration in kind and “pensions” includes gratuities or similar benefits.

31. (1) Personal data held by an individual and concerned only with the management of his personal, family or household affairs or held by him only for recreational purposes are exempt from the provisions of Part II of this Law and of sections 19 to 22. Domestic or other limited purposes.

(2) Subject to subsections (3) and (4)—

- (a) personal data held by an unincorporated members' club and relating only to the members of the club; and



- (b) personal data held by a data user only for the purpose of distributing, or recording the distribution of, articles or information to the data subjects and consisting only of their names, addresses or other particulars necessary for effecting the distribution,

are exempt from the provisions of Part II of this Law and of sections 19 to 22.

(3) Neither paragraph (a) nor paragraph (b) of subsection (2) applies to personal data relating to any data subject unless he has been asked by the club or data user whether he objects to the data relating to him being held as mentioned in that paragraph and has not objected.

(4) It shall be a condition of the exemption of any data under paragraph (b) of subsection (2) that the data are not used for any purpose other than that for which they are held and of the exemption of any data under either paragraph of that subsection that the data are not disclosed except as permitted by subsection (5); but the first exemption shall not be lost by any use, and neither exemption shall be lost by any disclosure, in breach of that condition if the data user shows that he had taken such care to prevent it as in all the circumstances was reasonably required.

(5) Data to which subsection (4) applies may be disclosed—

- (a) if the data subject (or a person acting on his behalf) has requested or consented to the disclosure of the data either generally or in the circumstances in which the disclosure in question is made;

- (b) if the person making the disclosure has reasonable grounds for believing that the disclosure falls within paragraph (a); or
- (c) in any case in which disclosure would be permitted by any other provision of this Part of this Act if subsection (4) were included among the non-disclosure provisions.

(6) Personal data held only for—

- (a) preparing statistics; or
- (b) carrying out research,

are exempt from the subject access provisions; but it shall be a condition of that exemption that the data are not used or disclosed for any other purpose and that the resulting statistics or the results of the research are not made available in a form which identifies the data subjects or any of them.

32. (1) Personal data held by any person are exempt from the provisions of Part II of this Law and of sections 19 to 22 if the data consist of information which that person is required by or under any enactment to make available to the public, whether by publishing it, making it available for inspection or otherwise and whether gratuitously or on payment of a fee. Other exemptions.

(2) The Committee may by order exempt from the subject access provisions personal data consisting of information the disclosure of which is prohibited or restricted by or under any enactment if the Committee considers that the prohibition or restriction ought to prevail over those provisions in the interests of any individual.

(3) Personal data are exempt from the subject access provisions if the data are kept only for the purpose of replacing other data in the event of the latter being lost, destroyed or impaired.

(4) Personal data are exempt from the non-disclosure provisions in any case in which the disclosure is—

- (a) required by or under any enactment, by any rule of law or by the order of a court; or
- (b) made for the purpose of obtaining legal advice or for the purposes of, or in the course of, legal proceedings in which the person making the disclosure is a party or a witness.

(5) Personal data are exempt from the non-disclosure provisions in any case in which—

- (a) the disclosure is to the data subject or a person acting on his behalf; or
- (b) the data subject or any such person has requested, or consented to, the particular disclosure in question; or
- (c) the disclosure is by a data user or a person carrying on a computer bureau to his servant or agent for the purpose of enabling the servant or agent to perform his functions as such; or
- (d) the person making the disclosure has reasonable grounds for believing that the disclosure falls within any of the foregoing paragraphs of this subsection.

(6) Section 3(3)(d) does not apply to any disclosure falling within paragraph (a), (b) or (c) of subsection (5) of this section; and that subsection shall apply to the restriction on disclosure in section 31(6) as it applies to the non-disclosure provisions.

(7) Personal data are exempt from the non-disclosure provisions in any case in which the disclosure is urgently required for preventing injury or other damage to the health of any person or persons; and in proceedings against any person for contravening a provision mentioned in section 24(3)(a) it shall be a defence to prove that he had reasonable grounds for believing that the disclosure in question was urgently required for that purpose.

(8) A person need not comply with a notice, request or order under the subject access provisions if compliance would expose him to proceedings for any offence other than an offence under this Law; and information disclosed by any person in compliance with such a notice, request or order shall not be admissible against him in proceedings for an offence under this Law.

33. (1) Section 19 shall have effect subject to the provisions of this section in the case of personal data consisting of marks or other information held by a data user—

Examination  
marks.

- (a) for the purpose of determining the results of an academic, professional or other examination or of enabling the results of any such examination to be determined; or
- (b) in consequence of the determination of any such results.

(2) Where the period mentioned in subsection (6) of section 19 begins before the results of the examination are announced that period shall be extended until—

(a) the end of five months from the beginning of that period; or

(b) the end of 40 days after the date of the announcement,

whichever is the earlier.

(3) Where by virtue of subsection (2) a request is complied with more than 40 days after the beginning of the period mentioned in subsection (6) of section 19, the information to be supplied pursuant to the request shall be supplied both by reference to the data in question at the time when the request is received and (if different) by reference to the data as from time to time held in the period beginning when the request is received and ending when it is complied with.

(4) For the purposes of this section the results of an examination shall be treated as announced when they are published or (if not published) when they are first made available or communicated to the candidate in question.

(5) In this section “examination” includes any process for determining the knowledge, intelligence, skill or ability of a candidate by reference to his performance in any test, work or other activity.

PART V  
GENERAL

34. (1) It shall be the duty of the Committee so to perform its functions under this Law as to promote the observance of the data protection principles by data users and persons carrying on computer bureaux.

General  
duties of the  
Committee.

(2) The Committee may consider any complaint that any of the data protection principles or any provision of this Law has been or is being contravened and shall do so if the complaint appears to the Committee to raise a matter of substance and to have been made without undue delay by a person directly affected; and where the Committee considers any such complaint it shall notify the complainant of the result of that consideration and of any action which the Committee proposes to take.

(3) The Committee may arrange for the dissemination in such form and manner as it considers appropriate of such information as it considers expedient to give to the public about the operation of this Law and other matters within the scope of the Committee's functions under this Law and may give advice to any person as to any of those matters.

(4) The Committee may from time to time lay before the States such general or special reports on the performance of its functions under this Law as the Committee thinks fit.

35. The Committee shall be the designated authority in the Bailiwick for the purposes of Article 13 of the European Convention; and the States may by Ordinance make provision as to the functions to be discharged by the Committee in that capacity.

Co-operation  
between  
parties to  
Convention.

Application  
to States  
Committees.

36. (1) Except as provided in subsection (2), a Committee of the States shall be subject to the same obligations and liabilities under this Law as a private person; and for the purposes of this Law each such Committee shall be treated as a person separate from any other such Committee and a person in the public service of the States shall be treated as a servant of each such Committee to which his responsibilities or duties relate.

(2) A Committee of the States shall not be liable to prosecution under this Act but sections 4(3) and 13(2) shall apply to any person who by virtue of this section falls to be treated as a servant of the Committee in question; and subsections (1)(b), (1)(f) and (5) of section 17 shall apply to a person in the public service of the States as they apply to any other person.

(3) In this section references to a Committee and to a Committee of the States refer to any Committee (however described) of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark.

Application  
to the police.

37. This Law applies to the Chief Officer of the Salaried Police Force of the Island of Guernsey, and for the purposes of this Law every member of that police force, every member of the special constabulary of the Island of Guernsey whilst acting as such and every special constable appointed by the Court of Alderney whilst acting as such shall be treated as his servant.

Data held,  
and services  
provided,  
outside the  
Bailiwick.

38. (1) Subject to the following provisions of this section, this Law does not apply to a data user in respect of data held, or to a person carrying on a computer bureau in respect of services provided, outside the Bailiwick.

(2) For the purposes of subsection (1)—

- (a) data shall be treated as held where the data user exercises the control referred to in subsection (5)(b) of section 1 in relation to the data; and
- (b) services shall be treated as provided where the person carrying on the computer bureau does any of the things referred to in subsection (6)(a) or (b) of that section.

(3) Where a person who is not resident in the Bailiwick—

- (a) exercises the control mentioned in paragraph (a) of subsection (2); or
- (b) does any of the things mentioned in paragraph (b) of that subsection,

through a servant or agent in the Bailiwick, this Law shall apply as if that control were exercised or, as the case may be, those things were done in the Bailiwick by the servant or agent acting on his own account and not on behalf of the person whose servant or agent he is.

(4) Where by virtue of subsection (3) a servant or agent is treated as a data user or as a person carrying on a computer bureau he may be described for the purposes of registration by the position or office which he holds; and any such description in an entry in the register shall be treated as applying to the person for the time being holding the position or office in question.



(5) This Law does not apply to data processed wholly outside the Bailiwick unless the data are used or intended to be used in the Bailiwick.

(6) Sections 3(3)(e), 4(2)(e) and 11(1) do not apply to the transfer of data which are already outside the Bailiwick; but references in section 11 to a contravention of the data protection principles include references to anything that would constitute such contravention if it occurred in relation to the data when held in the Bailiwick.

Power to  
amend Law.

39. The States may by Ordinance repeal, add to or modify any provision of this Law to the extent that the repeal, addition or modification is not inconsistent with the European Convention.

Ordinances,  
Orders,  
Regulations  
and Rules.

40. (1) Any power conferred by or under this Law to make any Ordinance, Order, Regulations or Rules includes power to vary or revoke any Ordinance, Order, Regulations or Rules so made by a subsequent Ordinance, Order, Regulations or Rules, as the case may be.

(2) The States may by Ordinance empower the Committee to provide by Regulations anything which, under any provision of this Law other than section 39, may be provided by Ordinance of the States.

(3) Without prejudice to any specific provision of this Law any Ordinance, Order, Regulations or Rules under this Law may contain such incidental or supplementary provisions as appear to the States, to the Committee or to the Royal Court as the case may be, to be expedient for the purpose of the Ordinance, Order, Regulations or Rules.

(4) Any Ordinance, Order, Regulations or Rules made under this Law may make different provision for different cases or circumstances and, without prejudice to the generality of the foregoing, may make different provision in respect of data consisting of information of different descriptions.

(5) In making Regulations prescribing any fees payable for any purpose of this Law the Committee shall have regard to the desirability of securing that those fees are sufficient to offset the expenses incurred by the Committee and by Her Majesty's Greffier in performing their functions under this Law.

(6) Any Order or Regulations made under this Law shall be laid before a meeting of the States as soon as may be after being made and if at that meeting or the next meeting the States resolve that the Order or Regulations be annulled, the Order or Regulations shall cease to have effect but without prejudice to anything done under the Order or Regulations or to the making of a new Order or new Regulations.

41. (1) In this Law, unless the context otherwise requires,— General interpretation.

“Bailiwick registered company” means a registered company incorporated under the Law entitled “Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée” registered on 21st March 1908<sup>(a)</sup> or under the Law entitled “Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée” registered on 22nd May 1894<sup>(b)</sup>;

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<sup>(a)</sup> Ordres en Conseil Vol. IV, p. 178.

<sup>(b)</sup> Ordres en Conseil Vol. II, p. 451.

- “business” includes any trade or profession;
- “the Committee” means the States Advisory and Finance Committee;
- “data equipment” means equipment for the automatic processing of data or for recording information so that it can be automatically processed;
- “data material” means any document or other material used in connection with data equipment;
- “a de-registration notice” means a notice under section 10;
- “enactment” includes an enactment passed after this Law;
- “an enforcement notice” means a notice under section 9;
- “the European Convention” means the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data which was opened for signature on 28th January, 1981;
- “prescribed” means prescribed by Regulations made by the Committee;
- “the register” means the register maintained under section 3 and (except where the reference is to a registered company or to the registered office of a company) “registered”, “registered person” and “registration” shall be construed accordingly;
- “registered company” means a company registered under the enactments relating to companies for the time being in force in any part of the British Islands;

“registered office” in relation to a registered company has the same meaning as in the enactments under which the company is registered;

“Royal Court” means the Royal Court of the Island of Guernsey sitting as a Full Court;

“the States”, except in section 36, means the States of Guernsey;

“statutory functions” means functions imposed or conferred on any person or body by or under an enactment;

“a transfer prohibition notice” means a notice under section 11.

(2) A reference in this Law to a numbered provision is a reference to the provision bearing that number in this Law; and a reference in a section of this Law to a numbered subsection or lettered paragraph is a reference to the subsection or paragraph bearing that number or letter in that section.

42. (1) This Law shall come into force as follows: Commence-  
ment and  
transitional  
provisions.

(a) sections 4, 13, 17(1)(a), (b) and (f) and 22(1) and (2), at the end of the period of three months after its registration on the records of the Island of Guernsey;

(b) section 19 and paragraph 1(1)(b) of Schedule 2, on 11th November 1987;

(c) the remaining provisions, on the day after its registration on the records of the Island of Guernsey.

(2) The Committee shall not have power before 11th November 1987—

- (a) to refuse an application made in accordance with section 5 on the ground mentioned in section 6(2)(c); or
- (b) to serve an enforcement notice imposing requirements to be complied with, a de-registration notice expiring, or a transfer prohibition notice imposing a prohibition taking effect, before that date.

(3) Where the Committee proposes to serve any person with an enforcement notice before 11th November 1987 it shall, in determining the time by which the requirements of the notice are to be complied with, have regard to the probable cost to that person of complying with those requirements.

(4) Section 20 shall not apply to damage suffered before the end of the period mentioned in subsection (1); and in deciding whether to refuse an application or serve a notice under Part II of this Law the Committee shall treat the provision about accuracy in the fifth data protection principle as inapplicable until the end of that period and as inapplicable thereafter to data shown to have been held by the data user in question since before the end of that period.

(5) Sections 21 and 22(3) shall not apply to damage suffered before the day after the registration of this Law on the records of the Island of Guernsey.

Citation.

43. This Law may be cited as the Data Protection (Bailiwick of Guernsey) Law, 1986.

SCHEDULES

SCHEDULE 1            Section 2(1)

THE DATA PROTECTION PRINCIPLES

PART I

THE PRINCIPLES

*Personal data held by data users*

1. The information to be contained in personal data shall be obtained, and personal data shall be processed, fairly and lawfully.

2. Personal data shall be held only for one or more specified and lawful purposes.

3. Personal data held for any purpose or purposes shall not be used or disclosed in any manner incompatible with that purpose or those purposes.

4. Personal data held for any purpose or purposes shall be adequate, relevant and not excessive in relation to that purpose or those purposes.

5. Personal data shall be accurate and, where necessary, kept up to date.

6. Personal data held for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.

7. An individual shall be entitled—

(a) at reasonable intervals and without undue delay or expense—

- (i) to be informed by any data user whether he holds personal data of which that individual is the subject; and
- (ii) to access to any such data held by a data user; and
- (b) where appropriate, to have such data corrected or erased.

*Personal data held by data users or in respect of which services are provided by persons carrying on computer bureaux*

8. Appropriate security measures shall be taken against unauthorised access to, or alteration, disclosure or destruction of, personal data and against accidental loss or destruction of personal data.

## PART II

### INTERPRETATION

#### *The first principle*

1. (1) Subject to sub-paragraph (2) of this paragraph, in determining whether information was obtained fairly regard shall be had to the method by which it was obtained, including in particular whether any person from whom it was obtained was deceived or misled as to the purpose or purposes for which it is to be held, used or disclosed.

(2) Information shall in any event be treated as obtained fairly if it is obtained from a person who—

- (a) is authorised by or under any enactment to supply it; or

- (b) is required to supply it by or under any enactment or by any convention or other instrument imposing an international obligation on the Bailiwick, or on Her Majesty's Government in the United Kingdom in relation to the Bailiwick;

and in determining whether information was obtained fairly there shall be disregarded any disclosure of the information which is authorised or required by or under any enactment or required by any such convention or other instrument as aforesaid.

*The second principle*

2. Personal data shall not be treated as held for a specified purpose unless that purpose is described in particulars registered under this Law in relation to the data.

*The third principle*

3. Personal data shall not be treated as used or disclosed in contravention of this principle unless—

- (a) used otherwise than for a purpose of a description registered under this Law in relation to the data; or
- (b) disclosed otherwise than to a person of a description so registered.

*The fifth principle*

4. Any question whether or not personal data are accurate shall be determined as for the purposes of section 20 of this Law but, in the case of such data as are mentioned in subsection (2) of that section, this principle shall not be regarded as having been contravened by reason of any inaccuracy in the information there mentioned if the requirements specified in that subsection have been complied with.



*The seventh principle*

5. (1) Paragraph (a) of this principle shall not be construed as conferring any rights inconsistent with section 19 of this Law.

(2) In determining whether access to personal data is sought at reasonable intervals regard shall be had to the nature of the data, the purpose for which the data are held and the frequency with which the data are altered.

(3) The correction or erasure of personal data is appropriate only where necessary for ensuring compliance with the other data protection principles.

*The eighth principle*

6. Regard shall be had—

- (a) to the nature of the personal data and the harm that would result from such access, alteration, disclosure, loss or destruction as are mentioned in this principle; and
- (b) to the place where the personal data are stored, to security measures programmed into the relevant equipment and to measures taken for ensuring the reliability of staff having access to the data.

*Use for historical, statistical or research purposes*

7. Where personal data are held for historical, statistical or research purposes and not used in such a way that damage or distress is, or is likely to be, caused to any data subject—

- (a) the information contained in the data shall not be regarded for the purposes of the first principle as obtained unfairly by reason only that its use for any such purpose was not disclosed when it was obtained; and
- (b) the data may, notwithstanding the sixth principle, be kept indefinitely.

## SCHEDULE 2

## Section 14

## POWERS OF ENTRY AND INSPECTION

*Issue of warrants*

1. (1) If the Bailiff is satisfied by information on oath supplied by an officer or servant of the Committee that there are reasonable grounds for suspecting—

- (a) that an offence under this Law has been or is being committed; or
- (b) that any of the data protection principles have been or are being contravened by a registered person,

and that evidence of the commission of the offence or of the contravention is to be found on any premises specified in the information, he may, subject to paragraph 2 of this Schedule, grant a warrant addressed to any officer of the Committee or to a member of the salaried police force of the Island of Guernsey and authorising that person, at any time within seven days of the date of the warrant, to enter those premises, to search them, to inspect, examine, operate and test any data equipment found there and to inspect and seize any document or other material found there which may be such evidence as aforesaid.

(2) A warrant under this Schedule may authorise the person to whom it is addressed to be accompanied when executing the warrant by any other person identified in that behalf by the warrant; and a person so identified shall, when accompanying the person to whom the warrant is addressed, have the same authority to act under it as that person.

2. The Bailiff shall not issue a warrant under this Schedule unless he is satisfied—

- (a) that the Committee has given seven days' notice in writing to the occupier of the premises in question demanding access to the premises; and
- (b) that access was demanded at a reasonable hour and was unreasonably refused; and
- (c) that the occupier has, after the refusal, been notified by the Committee of the application for the warrant and has had an opportunity of being heard by the Bailiff on the question whether or not it should be issued;

but the foregoing provisions of this paragraph shall not apply if the Bailiff is satisfied that the case is one of urgency or that compliance with those provisions would defeat the object of the entry.

### *Execution of warrants*

3. A person executing a warrant issued under this Schedule may use such reasonable force as may be necessary.

4. A warrant issued under this Schedule shall be executed at a reasonable hour unless it appears to the person executing it that there are grounds for suspecting that the evidence in question would not be found if it were so executed.

5. If the person who occupies the premises in respect of which a warrant is issued under this Schedule is present when the warrant is executed, he shall be shown the warrant and supplied with a copy of it; and if that person is not present a copy of the warrant shall be left in a prominent place on the premises.

6. (1) A person seizing anything in pursuance of a warrant under this Schedule shall give a receipt for it if asked to do so.

(2) Anything so seized may be retained for so long as is necessary in all the circumstances but the person in occupation of the premises in question shall be given a copy of anything that is seized if he so requests and the person executing the warrant considers that it can be done without undue delay.

*Matters exempt from inspection and seizure*

7. The powers of inspection and seizure conferred by a warrant issued under this Schedule shall not be exercisable in respect of personal data which are exempt from Part II of this Law.

8. (1) Subject to the provisions of this paragraph, the powers of inspection and seizure conferred by a warrant issued under this Schedule shall not be exercisable in respect of—

- (a) any communication between a professional legal adviser and his client in connection

with the giving of legal advice to the client with respect to his obligations, liabilities or rights under this Law; or

- (b) any communication between a professional legal adviser or his client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Law and for the purposes of such proceedings.

(2) Sub-paragraph (1) applies also to—

- (a) any copy or other record of any such communication as is there mentioned; and
- (b) any document or article enclosed with or referred to in any such communication if made in connection with the giving of any advice or, as the case may be, in connection with or in contemplation of and for the purposes of such proceedings as are there mentioned.

(3) This paragraph does not apply to anything in the possession of any person other than the professional legal adviser or his client or to anything held with the intention of furthering a criminal purpose.

(4) In this paragraph references to the client of a professional legal adviser include references to any person representing such a client.

9. If the person in occupation of any premises in respect of which a warrant is issued under this Schedule objects to the inspection or seizure under the warrant of any material on the grounds that it

consists partly of matters in respect of which those powers are not exercisable, he shall, if the person executing the warrant so requests, furnish that person with a copy of so much of the material as is not exempt from those powers.

*Vessels, vehicles etc.*

10. In this Schedule "premises" includes any vessel, vehicle, aircraft or hovercraft, and references to the occupier of any premises include references to the person in charge of any vessel, vehicle, aircraft or hovercraft.

K. H. TOUGH,

Her Majesty's Greffier.