



Jersey

## **DATA PROTECTION (REGISTRATION AND CHARGES) (AMENDMENT) (JERSEY) REGULATIONS 2019**

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## **DATA PROTECTION (REGISTRATION AND CHARGES) (AMENDMENT) (JERSEY) REGULATIONS 2019**

*Made*

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*Coming into force*

*1st January 2020*

**THE STATES** make these Regulations under Articles 18 and 46 of the Data Protection Authority (Jersey) Law 2018<sup>1</sup> –

### **1 Interpretation**

In these Regulations, “2018 Regulations” means the Data Protection (Registration and Charges) (Jersey) Regulations 2018<sup>2</sup>.

### **2 Regulation 1 (interpretation) amended**

In Regulation 1 of the 2018 Regulations –

- (a) after the definition “Law” there is inserted –

“ “payer” means a registered controller or registered processor who is required to pay an annual charge under Regulation 6;

“past-year revenues” means a payer’s gross revenues that are generated by or on behalf of that part of the payer’s business that is established in Jersey for the year before the year to which an annual charge relates;”;

- (b) the definition “staff” is deleted;

- (c) after the definition “registration period” there is inserted –

“ “year” means a calendar year.”.

### **3 Regulation 4 amended, Regulation 5 deleted**

Regulations 4(2) and 5 of the 2018 Regulations are deleted.

### **4 Regulation 6 (requirement to pay annual charge) amended**

For Regulation 6 of the 2018 Regulations there is substituted –

## **“6 Requirement to pay annual charge**

- (1) Every registered controller and registered processor must pay an annual charge to the Authority for each calendar year or part of a calendar year in which the controller or processor is registered, the amount of which is to be calculated in accordance with Regulations 6A and 6B.
- (2) An annual charge falls due on 1st January of the year to which the charge relates and must be paid by the last day of the following month.
- (3) However, if the controller or processor becomes registered during the course of a year the annual charge falls due one month after registration.
- (4) A registered controller or registered processor is exempt from paying the annual charge if –
  - (a) the only processing carried out by the controller or processor falls within any of the classes of processing set out in the Schedule; and
  - (b) no further disclosure relating to that processing is made other than –
    - (i) as required by law, including by order of a court, or
    - (ii) as permitted by Article 64 of the Data Protection Law (permitted processing for law enforcement, legal proceedings and public records purposes).

## **6A Annual charge: calculation of amount**

- (1) The amount of a payer’s annual charge is the sum of the applicable base amount set out in paragraph (2) and every additional amount set out in any of paragraphs (3), (4) and (5) that applies in the circumstances.
- (2) The base amount that must be paid by a payer is –
  - (a) £70, if the payer has fewer than 10 full-time equivalent employees;
  - (b) £90, if the payer has at least 10, but not more than 50, full-time equivalent employees; or
  - (c) £500, if the payer has more than 50 full-time equivalent employees.
- (3) A payer who has past-year revenues of more than £5 million must also pay –
  - (a) £150, if those revenues are £20 million or less; or
  - (b) £500, if those revenues are more than £20 million.
- (4) A payer who is registered with the Jersey Financial Services Commission and is carrying on a financial services business as specified in Schedule 2 to the Proceeds of Crime (Jersey) Law 1999<sup>3</sup> (other than in paragraphs 6, 8 and 10 of Part B) must also pay –
  - (a) £50, if the payer has fewer than 10 full-time equivalent employees;

- (b) £150, if the payer has at least 10, but not more than 50, full-time equivalent employees; or
  - (c) £600, if the payer has more than 50 full-time equivalent employees.
- (5) A payer to whom paragraph (6) applies must also pay –
  - (a) £50, if the payer has fewer than 10 full-time equivalent employees;
  - (b) £150, if the payer has at least 10, but not more than 50, full-time equivalent employees; or
  - (c) £350, if the payer has more than 50 full-time equivalent employees.
- (6) This paragraph applies to any payer, other than a payer exempted from the requirement to register with the Jersey Financial Services Commission, who –
  - (a) processes special category data;
  - (b) to which paragraph (4) does not apply; and
  - (c) has past-year revenues of at least £100,000.
- (7) For the purposes of this Regulation, in determining the number of full-time equivalent (“FTE”) employees of a payer –
  - (a) a person employed for no more than 9 hours a week is treated as 25% of a FTE employee;
  - (b) a person employed for more than 9 hours but no more than 18 hours a week is treated as 50% of a FTE employee;
  - (c) a person employed for more than 18 hours but not more than 27 hours a week is treated as 75% of a FTE employee; and
  - (d) a person employed for more than 27 hours a week is treated as a FTE employee.
- (8) The determination referred to in paragraph (7) must be calculated on the basis of the highest number of posts existing at any time during the past 12 months, ignoring any vacancies.
- (9) The Authority may –
  - (a) issue guidance regarding the calculation of the number of full-time equivalent employees and whether any particular category of worker is to be treated as an employee or not; and
  - (b) make determinations on the application of paragraphs (7) and (8) to any payer.
- (10) In this Regulation, “employee” includes –
  - (a) if the payer is an individual, the payer;
  - (b) an office holder of the payer; and
  - (c) if the payer is a partnership, an individual who is a partner.

**6B Exception for payer being administered by trust company businesses or fund services businesses**

- (1) In this Regulation, “trust company business” and “fund services business” have the same meanings as in Article 1(1) of the Financial Services (Jersey) Law 1998<sup>4</sup>.
- (2) Despite Regulation 6A, the amount of the annual charge for a registered controller or registered processor that is being administered by a trust company business or a fund services business is £50.
- (3) A registered controller or registered processor referred to in paragraph (2) is not eligible under Regulation 6(4) for an exemption from paying the annual charge.

**6C Information requirement**

- (1) When paying an annual charge to the Authority, a payer must provide the Authority with sufficient information to identify the payer and substantiate that the amount of the payment is correct, including, where relevant, information on –
  - (a) the number of the payer’s full-time equivalent employees, as determined under Regulation 6A(7) and (8);
  - (b) the payer’s past-year revenues;
  - (c) whether the payer is registered with the Jersey Financial Services Commission;
  - (d) whether the payer processes special category data; and
  - (e) in the case of a payer falling within Regulation 6B, the name of the trust company business or fund services business by which the payer is administered.
- (2) A payer must provide the Authority with any additional information requested by the Authority that relates to the calculation of the payer’s annual charge.”.

**5 Regulation 7 (power to remove entry in register) amended**

In Regulation 7 of the 2018 Regulations –

- (a) in sub-paragraph (a), “or” is deleted;
- (b) after sub-paragraph (b) there is inserted –
  - “(c) fails to provide sufficient information as required by Regulation 6C; or
  - (d) provides information under Regulation 6C that, in any material way, is false, misleading or incomplete.”.

**6 Schedule (classes of processing attracting exemption from charges) amended**

In the Schedule to the 2018 Regulations, for paragraphs 1 and 2 there is substituted –

**“1 Public authorities**

Processing that is carried out by a registered controller who is a public authority.

**1A Candidates for election**

Processing that –

- (a) is carried out by a registered controller who has been admitted as a candidate for a public election of an officer in a constituency under Article 18 of the Public Elections (Jersey) Law 2002<sup>5</sup>;
- (b) is for the purpose of the contesting of the public election by the registered controller;
- (c) does not involve disclosure of the personal data to a third party otherwise than –
  - (i) with the consent of the data subject, or
  - (ii) in a case where it is necessary to make such disclosure for that purpose; and
- (d) does not involve keeping the personal data after it is no longer necessary for the purpose of contesting that public election.

**1B Provided schools**

Processing that is carried out by a registered controller that is a provided school, as defined in Article 1(1) of the Education (Jersey) Law 1999<sup>6</sup>.

**2 Accounts and records after ceasing to conduct business**

Processing that –

- (a) is solely for the purpose of retaining personal data as required by law after ceasing to conduct business;
- (b) is carried out by a registered controller who has ceased conducting any business or activity other than retaining the personal data; and
- (c) does not involve the disclosure of the personal data other than –
  - (i) with the consent of the data subject, or
  - (ii) in the case where the disclosure is necessary for the purpose referred to in sub-paragraph (a).”.

**7 Transitional provision**

If, before the commencement of these Regulations, a registered controller or registered processor has already paid an annual charge in respect of any portion of the year 2020, the pro rata amount of the payment attributable to that year is subtracted from the amount to be paid as the annual charge for 2020 due on or after such commencement.

**8 Citation and commencement**

These Regulations may be cited as the Data Protection (Registration and Charges) (Amendment) (Jersey) Regulations 2019 and come into force on 1st January 2020.

**L.-M. HART**

*Deputy Greffier of the States*



## ENDNOTES

### Table of Endnote References

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<i>1</i>	<i>chapter 15.245</i>
<i>2</i>	<i>chapter 15.240.70</i>
<i>3</i>	<i>chapter 08.780</i>
<i>4</i>	<i>chapter 13.225</i>
<i>5</i>	<i>chapter 16.600</i>
<i>6</i>	<i>chapter 10.800</i>