DATA PROTECTION (JERSEY) LAW 2018

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Jersey

DATA PROTECTION (JERSEY) LAW 2018

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Jersey

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A LAW to make new and consolidated provision relating to the protection of natural persons with regard to the processing and free movement of personal data and for connected purposes.

Commencement [see endnotes]

PART 1

INTRODUCTORY

1 Interpretation

(1) In this Law –

"Authority" means the Data Protection Authority established by Article 2 of the Authority Law;

"Authority Law" means the Data Protection Authority (Jersey) Law 2018;

"appropriate safeguards", in relation to the protection of personal data or the rights and freedoms of natural persons includes –

(a) technical or organizational measures to ensure that the personal data are processed fairly;

(b) encryption or pseudonymization of the personal data concerned; and

(c) duties imposed by law, such as duties of confidentiality or secrecy;

"automated processing" includes profiling;

"biometric data" means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, that allow or confirm the unique identification of that natural person, such as facial images or fingerprint data;

"binding corporate rules" means personal data protection policies that are adhered to by a controller or processor established in the territory of a Member State for transfers or a set of transfers of personal data to a controller or processor in one or more third countries within a group of undertakings, or group of enterprises, engaged in a joint economic activity;

"business" includes any activity, trade or profession, whether or not carried on for profit and for clarity includes any such activity, trade or profession carried on for a charity or other not-for-profit body;

"code" means a code of conduct approved by the Authority under Article 78 and includes any amendment or extension of such a code;

"competent supervisory authority" means any supervisory authority with jurisdiction to regulate the controller or processor in question;

"controller" means the natural or legal person, public authority, agency or other body that, whether alone or jointly with others, determines the purposes and means of the processing of personal data, and where those purposes and means are determined by the relevant law, the controller or the specific criteria for its nomination may be provided for by such law;

"data" means information that –

(a) is being processed by means of equipment operating automatically in response to instructions given for that purpose;

(b) is recorded with the intention that it should be processed by means of such equipment;

(c) is recorded as part of a filing system or with the intention that it should form part of a filing system; or

(d) is recorded information held by a scheduled public authority and does not fall within any of sub-paragraphs (a) to (c);

"data concerning health" means personal data related to the physical or mental health of a natural person, including the provision of health care services, that reveal information about his or her health status;

"data protection impact assessment" has the meaning assigned by Article 16(1);

"data protection officer" means the person appointed as such under Article 24;

"data protection principles" means the requirements set out in Article 8(1);

"data subject" has the meaning assigned by Article 2;

"enterprise" means a natural or legal person engaged in an economic activity, irrespective of its legal form, including partnerships or associations regularly engaged in an economic activity;

"evidence of certification" means evidence of certification granted in accordance with a mechanism established by Regulations made under Article 80;

"filing system" means any set of personal data that, although the data is not processed by means of equipment operating automatically in response to instructions given for that purpose, is structured, either by reference to natural persons or to criteria relating to natural persons, in such a way that specific information relating to a particular natural person is readily accessible and whether the criteria is centralised, decentralised or dispersed on a functional or geographical basis;

"establishment", in the context of establishment in a territory or jurisdiction, means the effective and real exercise of activity through arrangements that are stable but that need not take any particular legal form and whether or not via a branch or subsidiary with a legal personality;

"GDPR" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119/1 4.5.2016);[1]

"genetic data" means personal data relating to the inherited or acquired genetic characteristics of a natural person that give unique information about the

physiology or the health of that natural person and that result, in particular, from an analysis of a biological sample from the natural person in question such as DNA or RNA analysis;

"group of undertakings" means a controlling undertaking and its controlled undertakings;

"health professional" means –

(a) a person lawfully practising as a medical practitioner, dentist, optometrist, dispensing optician, pharmacist, nurse, midwife or health visitor, osteopath, chiropractor, clinical psychologist, child psychotherapist or speech therapist;

(b) a music therapist employed by a body lawfully providing health services;

(c) a scientist employed by such a body as head of a department; or

(d) any person who may be prescribed;

"health record" means a record that –

(a) consists of data concerning health; and

(b) has been made by or on behalf of a health professional in connection with the care of that individual;

"information society service" means, subject to paragraph (3), a service normally provided for remuneration –

(a) without the parties being present at the same time;

(b) that is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means; and

(c) through the transmission of data on individual request;

"international organization" means an organization and its subordinate bodies governed by public international law, or any other body that is set up by, or on the basis of, an agreement between 2 or more countries;

"joint controller" has the meaning assigned by Article 7(1);

"large scale" means large scale having regard to the number of data subjects, volume or range of data being processed, duration or permanence of the activity and geographical extent;

"Law Enforcement Directive" means Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119/89 4.5.16);

"law enforcement purpose" means any of the following purposes, namely the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against, and the prevention of, threats to public security;

"Member State" means a Member State of the European Union;

"Minister" unless otherwise indicated, means the Minister for Sustainable Economic Development;

"parental responsibility" has the same meaning as in the Children (Jersey) Law 2002;

"personal data" has the meaning assigned by Article 2(1);

"personal data breach" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored or otherwise processed;

"prescribed" means prescribed by Regulations;

"processing" means any operation or set of operations that is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

"processor" means a natural or legal person, public authority, agency or other body that processes personal data on behalf of the controller, but does not include an employee of the controller;

"profiling" means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;

"pseudonymization" has the meaning assigned by Article 3;

"public authority" means –

(a) the States Assembly including the States Greffe;

(b) a Minister;

(c) a committee or other body established by a resolution of the States or by, or in accordance with, standing orders of the States Assembly;

(d) an administration of the States;

(e) a Department referred to in Article 1 of the Departments of the Judiciary and the Legislature (Jersey) Law 1965;

(f) any court or tribunal;

(g) the States of Jersey Police Force;

(h) a parish;

(i) the holder of a public office;

(j) in relation to any country other than Jersey, any person exercising or performing functions or holding any office similar or comparable to any of the persons described in sub-paragraphs (a) to (i); and

(k) any other person or body (whether incorporated or unincorporated) that exercises functions of a public nature;

"recipient", in relation to any personal data, means any person to whom the data are disclosed, whether a third party or not, but does not include a public authority to whom disclosure is or may be made in the framework of a particular inquiry in accordance with the relevant law;

"Regulations" means Regulations made by the States;

"relevant law" means the law of Jersey, another jurisdiction in the British Islands, a Member State or the European Union;

"representative" means a representative nominated by the controller under Article 4(3);

"restriction of processing" means the marking of stored personal data with the aim of limiting their processing in the future;

"scheduled public authority" has the same meaning as in the Freedom of Information (Jersey) Law 2011;

"States' employee" has the same meaning as in Article 2 of the Employment of States of Jersey Employees (Jersey) Law 2005;

"special category data" means –

(a) data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership;

(b) genetic or biometric data that is processed for the purpose of uniquely identifying a natural person;

(c) data concerning health;

(d) data concerning a natural person's sex life or sexual orientation; or

(e) data relating to a natural person's criminal record or alleged criminal activity;

"special purposes" means –

(a) academic purposes;

(b) the purpose of journalism;

(c) artistic purposes; or

(d) literary purposes;

"supervisory authority" means an independent public authority established under the relevant law for the purposes of the GDPR or equivalent legislation;

"third country" means, subject to paragraph (3A), a country or territory outside the European Economic Area other than Jersey;

"third party" means a natural or legal person, public authority, agency or body other than the data subject, controller, processor and persons who are authorized to process personal data under the direct authority of the controller or processor;

"transparency and subject rights provisions" means –

(a) the first data protection principle set out in Article 8(1)(a), to the extent that it requires data to be processed transparently;

(b) the provisions as to information to be provided to a data subject under Article 12; and

(c) the rights of data subjects set out in Part 6.[2]

(2) If personal data are processed for purposes for which they are required to be processed by or under an enactment, the person on whom the obligation to process the data is imposed is, in relation to the data, the controller for the purposes of this Law.

(3) The Minister may, by Order, specify the services that do or do not fall within the definition "information society service", by reference either to individual services or by class or description.

(3A) Despite the definition "third country" in Article 1(1), from the date (if any) on which the United Kingdom becomes a country outside the European Economic

Area until (if later than that date) the end of 2021, the United Kingdom is to be treated as not being a third country for the purpose of this Law.[3]

(4) Regulations may amend any of the definitions in paragraph (1), and may amend paragraph (3A).[4]

2 Personal data and data subject

(1) Personal data means any data relating to a data subject.

(2) A data subject is an identified or identifiable, natural, living person who can be identified, directly or indirectly, by reference to (but not limited to) an identifier such as –

(a) a name, an identification number or location data;

(b) an online identifier; or

(c) one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the person.

(3) The following matters must be taken into account in deciding whether the person is identified or identifiable –

(a) the means reasonably likely to be used by the controller or another person to identify the person, taking into account factors such as the cost and amount of time required for identification in the light of the available technology at the time of processing and technological factors;

(b) whether the personal data, despite pseudonymization, is capable of being attributed to that person by the use of information other than that kept separately for the purposes of pseudonymization.

(4) In this Article "identifier" means a number or code (including any unique number or code issued to the individual by a public authority) assigned to an individual by a controller or processor for the purposes of its operations that uniquely identifies the individual and includes location data.

3 Pseudonymization

(1) In this Law "pseudonymization" means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, and where that additional information is kept separately and is subject to technical and organizational measures to ensure that the personal data are not attributed to an identified or identifiable natural person.

(2) Pseudonymization may be achieved even though the additional information that would enable the attribution of the data to a specific data subject is retained within the controller's organization provided that the controller maintains records indicating who has access to that additional information.

4 Application

(1) This Law does not apply to the processing of personal data by a natural person in the course of a purely personal or household activity (but applies to controllers or processors that provide the means for processing personal data for such an activity).

(2) This Law applies to the processing of personal data –

(a) in the context of a controller or processor established in Jersey;

(b) by a controller or processor not established in Jersey but who uses equipment in Jersey for processing the data otherwise than for the purposes of transit through Jersey; or

(c) by a controller or processor not established in Jersey where the processing –

(i) relates to data subjects who are in Jersey, and

(ii) is for the purpose of offering goods or services to persons in Jersey or monitoring the behaviour of such persons.

(3) A controller referred to in paragraph (2)(b) must nominate, in writing and for the purposes of this Law, a representative established in Jersey.

(4) For the purposes of paragraphs (2) and (3), each of the following is to be treated as established in Jersey –

(a) a natural person who is ordinarily resident in Jersey;

(b) a body incorporated under the law of Jersey;

(c) a partnership or other unincorporated association formed under the law of Jersey;

(d) any person who does not fall within sub-paragraph (a), (b) or (c) but maintains in Jersey –

(i) an office, branch or agency through which the person carries on any processing of personal data, or

(ii) a regular practice that carries on any processing of personal data; or

(e) any person engaging in effective and real processing activities through stable arrangements in Jersey.

(5) Schedule 1 has effect to modify the application of this Law where the processing of personal data is carried out –

(a) by a controller that is a competent authority; and

(b) for a law enforcement purpose,

and Regulations may amend Schedule 1 in order to make further provision for such purposes.

(6) Regulations may also amend Schedule 1 so as to –

(a) add or remove any person or body to the list of competent authorities;

(b) ensure that the Law provides equivalent protection for personal data to that provided under the Law Enforcement Directive or by another jurisdiction in the British Islands; or

(c) make provision as to personal data contained in a judicial decision or record or case file processed in the course of a criminal investigation or proceedings.

(7) In this Article "competent authority" means –

(a) any person, body or other entity listed in paragraph 1 of Schedule 1; and

(b) any other person, body or other entity who exercises a function for a law enforcement purpose in Jersey,

but does not include the security and intelligence services of the Government of the United Kingdom.

5 Processing that does not require identification

(1) If the purposes for which a controller processes personal data do not, or no longer, require the identification of a data subject by the controller, the controller is not obliged to maintain, acquire or process additional information in order to identify the data subject for the sole purpose of complying with this Law.

(2) Where paragraph (1) applies and the controller is able to demonstrate that it is no longer able to identify the data subject, Articles 28 to 34 do not apply except where the data subject, for the purposes of exercising his or her rights under those Articles, provides additional information enabling his or her identification.

PART 2

FUNDAMENTAL DUTIES OF CONTROLLERS

6 General duties and accountability

(1) A controller –

(a) is responsible for, and must be able to demonstrate compliance with, the data protection principles in the manner provided for in this Law;

(b) if established in Jersey, may process personal data or cause it to be processed only if the controller is registered under Article 17 of the Authority Law;

(c) must pay such charges to the Authority as Regulations under Article 18 of the Authority Law may prescribe;

(d) in planning and implementing the processing of personal data, must ensure that appropriate safeguards for the rights of data subjects are put in place by design and by default in accordance with Article 15;

(e) must comply with the record-keeping requirements and disclose the records covered by those requirements on request to the Authority;

(f) where a processor is appointed, must appoint a processor only in accordance with Article 19;

(g) must report any personal data breach in the manner and to the extent required by Article 20 unless Part 7 applies;

(h) must appoint a data protection officer where so required by Article 24;

(i) must co-operate with any requests of the Authority under this Law or the Authority Law; and

(j) must comply with any order of the Authority under Article 25 of, and notice of the Authority under paragraph 1 of Schedule 1 to, the Authority Law.

(2) Adherence to a code or evidence of certification may provide evidence that an individual controller has complied with a particular obligation under this Law.

(3) The record keeping requirements do not apply in the case of organizations with fewer than 250 employees unless the processing –

(a) is likely to result in a risk to the rights and freedoms of data subjects;

(b) is not occasional; or

(c) includes special category data or relates to criminal convictions or related security measures.

(4) The Authority must take into account the specific needs of different sizes of enterprise in the application of this Law.

(5) Regulations may make further provision to modify or limit the application of paragraph (1) in the case of organizations mentioned in paragraph (3) and may amend the description of those organizations.

(6) In this Article "record keeping requirements" means the requirements with respect to record keeping set out in Articles 3(2) and 14(3).

7 Joint controllers

(1) Where 2 or more controllers jointly determine the purposes and means of the processing of personal data they are joint controllers.

(2) Joint controllers must make arrangements between themselves in a transparent manner so as to apportion their responsibilities in advance of the processing of personal data.

(3) Joint controllers must make a summary of the arrangements available to data subjects and may designate a contact point to facilitate communication between data subjects and joint controllers.

(4) Regardless of the terms and conditions of any arrangement under paragraph (2) or any other agreement –

(a) a data subject may exercise any right that he or she has under this Law against any joint controller; and

(b) each joint controller is jointly and severally liable for any damage caused by processing if it is in contravention of this Law.

(5) Where a joint controller proves that it had no responsibility for the damage, it may be exempted from liability.

(6) Paragraphs (1) to (3) do not apply where the respective responsibilities of joint controllers are clearly determined by law (otherwise than under this Article).

(7) Any joint controller may bring proceedings against any other joint controller to recover that part of the compensation corresponding to the other joint controller's part of responsibility for the damage.

(8) Regulations may make further provision about the respective roles of joint controllers, including the circumstances in which a joint controller is treated as being a sole controller.

8 Data protection principles

(1) A controller must ensure that the processing of personal data in relation to which the controller is the controller complies with the data protection principles, namely that data are –

(a) processed lawfully, fairly and in a transparent manner in relation to the data ("lawfulness, fairness and transparency");

(b) collected for specified, explicit and legitimate purposes and once collected, not further processed in a manner incompatible with those purposes ("purpose limitation");

(c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization");

(d) accurate and, where necessary, kept up to date, with reasonable steps being taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ("accuracy");

(e) kept in a form that permits identification of data subjects for no longer than is necessary for the purposes for which the data are processed ("storage limitation"); and

(f) processed in a manner that ensures appropriate security of the data, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organizational measures ("integrity and confidentiality").

(2) In relation to –

(a) paragraph (1)(b), further processing for the purposes specified in paragraph 17 of Schedule 2 (archiving and research) is not to be taken as incompatible with the initial purposes for which the data was collected;

(b) paragraph (1)(e), personal data may be stored to the extent necessary for the purposes specified in paragraphs 7 (other legal obligations) and 17 of Schedule 2 subject to implementation of the appropriate technical and organizational measures required by this Law in order to safeguard the rights and freedoms of the data subject.[5]

9 Lawful processing

(1) The processing of personal data that would otherwise be lawful is lawful for the purposes of this Law only if it meets at least one of the conditions specified in Schedule 2.

(2) However, in the case of any processing of data that includes special category data, it must meet at least one of the conditions mentioned in Part 2 of Schedule 2.

10 Fair and transparent processing

(1) To determine the fairness of processing personal data regard must be had to whether the method by which the data are obtained, including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed.

(2) Personal data are regarded as obtained fairly if they consist of information obtained from a person who –

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

(b) is required to supply it by or under any enactment or any international agreement imposing an international obligation on Jersey.

(3) In order that personal data may be processed fairly and transparently, a controller must –

(a) facilitate the exercise of the rights of data subjects under Part 6;

(b) act on a data subject's request unless the controller is unable to do so because the data subject cannot be identified or the processing is exempted from such a requirement under this Law.

11 Consent to processing

(1) In this Law, "consent", in relation to the processing of a data subject's personal data, means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, whether orally or in writing, signifies agreement to the processing of that data.

(2) Consent –

(a) is not informed unless the data subject is aware of the identity of the controller who will process the data and the purposes of the processing for which the personal data are intended;

(b) is not freely given if it does not allow separate consent to be given to different personal data processing operations where it is appropriate in the individual case.

(3) To establish the presence of such consent, the controller must be able to demonstrate that –

(a) the request for consent was in a concise, intelligible and easily accessible form;

(b) where that request was in writing together with other matters, that it was clearly distinguishable from those other matters;

(c) where the request for consent was by electronic means, that it was sought in a way that was not unnecessarily disruptive to the use of the service for which the request was provided;

(d) where consent was sought for the purposes of the performance of a contract that includes the provision of a service –

(i) consent was necessary for the performance of the contract, or

(ii) if it was not necessary, the controller has advised the data subject that he or she may refuse separate consent for the provision of the service without prejudice to the performance of the contract;

(e) the data subject was informed of the right to withdraw consent at any time and that it was as easy to withdraw consent as it was to give it; and

(f) the controller has made reasonable efforts to verify that the person giving the consent is who the person claims to be, particularly where that person claims to be the person authorized to consent for a child under the age of 13.

(4) A child under the age of 13 may not give valid consent to the processing of his or her personal data by a controller for the purposes of an information society service but valid consent on behalf of that child may be given by a person with parental responsibility for him or her.

(5) Consent is taken to cover all processing activities carried out for the same purpose for which it is given and separate consent is required for each separate purpose.

(6) The States may make Regulations –

(a) amending the age of consent in paragraphs (3)(f) or (4), providing exceptions to the inability of the child to consent and making further provision as to the steps that the controller must take to verify –

(i) the age and identity of the child and any person purporting to given consent on his or her behalf, and

(ii) that the person has actually given consent;

(b) governing the effect of consent where personal data is to be used for the purposes of scientific research.

12 Information to be provided to data subject

(1) A controller must ensure as far as practicable that where personal data have been obtained by the controller from the data subject, the data subject is provided with, or has made readily available to him or her, the specified information at the same time as the data are obtained.

(2) Where personal data were not obtained from the data subject, the controller must ensure that the specified information is provided or made readily available to the data subject before the relevant time except where –

(a) the data are already in his or her possession;

(b) paragraph (6) applies; or

(c) Regulations so specify.

(3) For the purposes of this Article, the relevant time is –

(a) a reasonable period after obtaining the personal data, but at the latest within 4 weeks, having regard to the specific circumstances in which the personal data are processed;

(b) if the personal data are to be used for communication with the data subject, at the latest at the time of the first communication to that data subject; or

(c) if a disclosure to another recipient is envisaged, at the latest when the personal data are first disclosed.

(4) For the purposes of this Article, the specified information is all of the following –

(a) the identity and contact details of the controller, and (where applicable), the controller's representative;

(b) the contact details of the data protection officer (if any);

(c) the purposes for which the data are intended to be processed and the legal basis for the processing;

(d) an explanation of the legitimate interests pursued by the controller or by a third party, if the processing is based on those interests;

(e) the recipients or categories of recipients of the personal data (if any);

(f) where applicable, the fact that the controller intends to transfer personal data to a third country or international organization and whether or not there is an adequate level of protection for the rights and freedoms of data subjects within the meaning of Article 66;

(g) the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period;

(h) information concerning the rights of data subjects under Part 6, to the extent that these apply;

(i) where the processing is based on consent, the existence of the right to withdraw consent under Article 11(3)(e);

(j) the existence of any automated decision-making, as referred to in Article 38, and any meaningful information about the logic involved in such decision-making as well as the significance and the envisaged consequences of such processing for the data subject;

(k) a statement of the right to complain to the Authority;

(l) whether the provision of personal data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the data subject is obliged to provide the personal data and the possible consequences of failing to provide such data;

(m) where the personal data are not obtained directly from the data subject, information identifying the source of the data;

(n) any further information that is necessary, having regard to the specific circumstances in which the data are or are to be processed, to enable processing in respect of the data subject to be fair.

(5) The specified information –

(a) must be provided in an intelligible form using clear language;

(b) may be supplemented by standardized machine-readable icons, and if so, the use of such icons is subject to such requirements that the Minister may, by Order, prescribe.

(6) Paragraph (2) does not apply if the controller believes that –

(a) providing the specified information is impossible, would involve a disproportionate effort on the part of the controller, or is likely to prejudice the objectives of the processing and the controller records the reasons for its belief and retains this record while it retains the data; or

(b) the recording of the information to be contained in the data, or the disclosure of the data by the controller, is necessary for compliance with any legal obligation to which the controller is subject, other than an obligation imposed by contract; or

(c) the data are held subject to an obligation of professional secrecy regulated by law (whether in Jersey or elsewhere).

(7) Where the controller does not provide the information the controller must take appropriate measures to protect the data subject's rights and interests, which may include making the specified information publicly available.

13 Purposes of processing

(1) Paragraph (2) applies where personal data are processed for a purpose other than that for which they were collected without the consent of the data subject and such processing is not authorized by the relevant law.

(2) Where this paragraph applies, the controller must assess whether that processing is compatible with the purposes for which the personal data were collected by taking into account factors that include –

(a) any link between the purposes for which the data have been collected and the purposes of the intended further processing;

(b) the context in which the data have been collected, in particular regarding the relationship between data subjects and the controller;

(c) the nature of the data, in particular whether it is special category data;

(d) the possible consequences of the intended further processing for data subjects; and

(e) the existence of appropriate safeguards.

(3) Where the controller intends to process personal data further, for a purpose other than that for which the data were collected, the controller must provide the data subject with information on that other purpose, together with the specified information referred to in Article 12(4) before that further processing takes place.

PART 3

OTHER DUTIES OF CONTROLLERS

14 Duty to comply with Law and keep records

(1) A controller is responsible for –

(a) implementing proportionate technical and organizational measures to ensure processing is performed in accordance with this Law; and

(b) demonstrating that those measures are in place so that processing is indeed performed in accordance with this Law.

(2) The measures referred to in paragraph (1) may include the adoption of appropriate data protection policies by the controller.

(3) The controller and any representative of the controller must maintain a written record of the processing activities for which the controller or representative is responsible containing –

(a) the name and contact details of the controller and any joint controller, representative of the controller or data protection officer;

(b) the purposes of the processing;

(c) a description of the categories of data subjects and personal data processed;

(d) a description of the recipients (if any) to whom the controller intends to, or may wish to, disclose the data;

(e) where it is envisaged that data will be transferred to a third country or an international organization, the name of that country or organization, and in the case of transfers referred to in paragraph 9 of Schedule 3, the appropriate safeguards that are put in place;

(f) where possible, the envisaged data retention periods for different categories of data; and

(g) where possible, a general description of the technical and organizational measures implemented in respect of the processed data.

(4) Adherence to a code or evidence of certification may provide evidence that an individual controller has complied with this Article.

(5) In this Article "proportionate" means proportionate having regard to –

(a) the nature, scope, context and purposes of processing;

(b) the risk and likelihood of prejudice to the rights of data subjects;

(c) best practices in technical and organizational measures;

(d) the state of technological development; and

(e) the costs of implementation.

15 Data protection by design and by default

(1) A controller must, both at the time of the determination of the means for processing and at the time of the processing itself, implement appropriate technical and organizational measures that are designed to –

(a) implement the data protection principles in an effective manner; and

(b) integrate the necessary safeguards into the processing to meet the requirements of this Law and protect the rights of data subjects.

(2) In determining whether or not a measure is appropriate for the purposes of this Article, regard must be had to the state of technological development, the cost of implementation and the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for rights and freedoms of natural persons posed by the processing.

(3) The technical and organizational measures must ensure as far as practicable that, by default –

(a) only personal data that are necessary for each specific purpose of the processing are processed; and

(b) personal data are not made accessible to an indefinite number of natural persons without the data subject's consent or other lawful authority.

(4) Paragraph (3) applies to the amount of personal data collected, the extent of their processing, the period of their storage and their accessibility.

(5) Adherence to a code or evidence of certification may provide evidence that an individual controller has or has not contravened paragraph (1).

16 Data protection impact assessments required for high risk processing

(1) Where a type of processing is likely to result in a high risk to the rights and freedoms of natural persons, a controller must carry out an assessment of the impact of the envisaged processing operations on the protection of personal data before the processing, to be known as a data protection impact assessment.

(2) In assessing the risk to the rights and freedoms of natural persons, regard must be had in particular to the use of new technologies, and the nature, scope, context and purposes of the processing.

(3) Where more than one processing operation is similar as to the degree of risk involved, the risks may be assessed using a single assessment.

(4) When carrying out a data protection impact assessment, the controller must seek the advice of the data protection officer, where one is appointed.

(5) A data protection impact assessment is, in particular, required in the case of –

(a) a systematic and extensive evaluation of personal aspects relating to natural persons that is based on automated processing, and on which decisions are based that produce legal effects concerning, or similarly significantly affecting, those persons;

(b) the processing of special category data on a large scale; or

(c) a systematic monitoring of a publicly accessible area on a large scale.

(6) A data protection impact assessment must contain the following minimum requirements –

(a) a systematic description of the envisaged processing operations and the purposes of the processing, including, where applicable, the legitimate interest pursued by the controller;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the purposes;

(c) an assessment of the risks to the rights and freedoms of natural persons referred to in paragraph (1); and

(d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Law, taking into account the rights and legitimate interests of any person.

(7) The Authority may publish a list of the types of processing operation that are subject to the requirement for a data protection impact assessment and those types of processing operation for which no data protection impact assessment is required.

(8) Where appropriate, the controller must seek the views of data subjects or their representatives on the intended processing, without limiting the protection of commercial or public interests or the security of processing operations.

(9) Paragraphs (1) to (6) do not apply where –

(a) processing in accordance with paragraphs 4 (public functions) and 7 (other legal obligations) of Schedule 2 has a legal basis and is regulated by the relevant law; and

(b) a data protection impact assessment has already been carried out as part of a general impact assessment in the context of the adoption of that legal basis.

(10) The controller must review, and where appropriate, revise the data protection impact assessment where –

(a) there is a change in the risks posed to the rights and freedoms of data subjects by the processing operations; or

(b) the controller otherwise considers it necessary.

(11) A review under paragraph (10) must include a review of –

(a) whether the processing operations being carried out accord with those described in the data protection impact assessment; and

(b) whether the measures established and carried out to address the risks of processing accord with those envisaged in the data protection impact assessment.

17 Prior consultation required for high risk processing

(1) This Article applies where a data protection impact assessment indicates that any processing would pose a high risk to the rights and freedoms of natural persons in the absence of measures taken by the controller to mitigate the risk.

(2) Before starting the processing, the controller must consult the Authority giving the following information in writing –

(a) where applicable, the respective responsibilities of the controller, joint controllers and processors involved in the proposed processing, in particular for processing within a group of undertakings;

(b) a copy of the data protection impact assessment;

(c) the contact details of any data protection officer; and

(d) any other information required by the Authority.

(3) Where the Authority considers that the proposed processing would be in contravention of this Law, in particular where the controller has insufficiently identified or mitigated the risk, the Authority –

(a) must give written notice of its opinion to the controller and, where applicable to the processor; and

(b) may exercise any power conferred on the Authority by this Law or the Authority Law in relation to a contravention or potential contravention of a requirement of this Law.

(4) The Authority must give the notice required by paragraph (3)(a) –

(a) without undue delay; and

(b) in any event within 8 weeks of receiving the information from the controller under paragraph (2).

(5) The Authority may extend the period in paragraph (4)(b) by a further 6 weeks taking into account the complexity of the intended processing, but in this case, the Authority must inform the controller and, where applicable, the processor, of the extension and the reasons for it within 4 weeks of receiving the information from the controller under paragraph (2).

(6) If the Authority has requested information from the controller or the processor for the purposes of the consultation, any period of time spent awaiting the provision of that information must be discounted from each period specified in paragraph (4)(b) or (5).

18 Prior consultation required for high risk legislation

(1) This Article applies where any draft Law or Regulations, or any proposal under Article 31 of the States of Jersey Law 2005, is or are to be lodged *au Greffe* in accordance with standing orders made under Article 48 of that Law, or any draft Jersey legislation that a Minister is responsible for making is to be made –

(a) that would require, authorize or otherwise relate to the processing of personal data; and

(b) taking into account the nature, scope and purposes of the processing, is likely to result in a high risk to the rights and freedom of natural persons.

(2) The Minister or other person responsible for the lodging or making, as the case may be, must consult the Authority by means of a written notice, to be known as a "consultation notice".

(3) The consultation notice must include any data protection impact assessment carried out in connection with the proposed processing of personal data mentioned in paragraph (1)(a) and, unless included within such an assessment –

(a) a systematic description of the proposed processing (including the means of processing), its purposes and the objectives of the provisions of the legislation effecting it;

(b) an assessment of the necessity (including proportionality) of the proposed processing in relation to those objectives;

(c) an assessment of the risks to the rights and freedoms of data subjects posed by the processing; and

(d) the measures envisaged to address those risks, including appropriate safeguards, security measures and mechanisms to ensure the protection of personal data and demonstrate compliance with this Law, taking into account the rights and freedoms of data subjects.

19 Appointment of processor

(1) Where processing is to be carried out on behalf of a controller, the controller must use only processors that provide sufficient guarantees to implement appropriate technical and organizational measures in such a manner that processing will meet the requirements of this Law and ensure the protection of the rights of the data subject.

(2) The processor must not engage another processor without prior specific or general written authorization of the controller, and where the authorization is general, the processor must inform the controller of any intended changes concerning the addition or replacement of other processors, so that the controller may object to the changes.

(3) Processing by a processor must be governed by a contract or other legal act under the relevant law, that –

(a) is binding on the processor with regard to the controller; and

(b) sets out the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the controller.

(4) The contract or other legal act must, in particular, stipulate that the processor –

(a) processes the personal data only on documented instructions from the controller, including with regard to transfers of personal data to a third country or an international organization, unless required to do so by the relevant law to which the processor is subject, in which case the processor must inform the controller of that legal requirement before processing, unless that law prohibits such information being given;

(b) ensures that persons authorized to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

(c) takes all measures required by Article 21;

(d) respects the conditions referred to in paragraphs (2), (6) and (7) for engaging another processor;

(e) taking into account the nature of the processing, assists the controller by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject’s rights set out in Part 6;

(f) assists the controller in ensuring compliance with the obligations under Articles 16, 20 and 21, taking into account the nature of processing and the information available to the processor;

(g) at the choice of the controller, deletes or returns all the personal data to the controller after the end of the provision of services relating to processing, and deletes existing copies unless the relevant law requires storage of the personal data;

(h) makes available to the controller all information necessary to demonstrate compliance with the obligations laid down in this Article and allows for and contributes to audits, including inspections, conducted by the controller or another auditor mandated by the controller.

(5) With respect to paragraph (4)(h), the processor must immediately inform the controller if, in its opinion, an instruction infringes this Law or other data protection provisions of the relevant law.

(6) Where the processor engages another processor the obligations set out in paragraph (4) must, in particular, provide sufficient guarantees to implement appropriate technical and organizational measures in such a manner that the processing will meet the requirements of this Law and where that other processor fails to fulfil those obligations, the initial processor remains fully liable to the controller for the performance of that other processor's obligations.

(7) Adherence to a code or evidence of certification may provide evidence that an individual processor has complied with paragraphs (1) and (6).

(8) Without limiting the provisions of an individual contract between the controller and the processor, the contract or the other legal act referred to in paragraph (4) may be based, in whole or in part, on standard contractual clauses as referred to in paragraph (9).

(9) The Authority may publish standard contractual clauses for the matters referred to in paragraphs (4) to (6).

(10) The contract or the other legal act referred to in this Article must be in writing.

20 Notification of breach

(1) In the case of a personal data breach, the controller must, without undue delay and, where feasible, not later than 72 hours after having become aware of it, notify the personal data breach in writing to the Authority in the manner required by the Authority, unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons.

(2) If the notification to the Authority is not made within 72 hours, it must be accompanied by reasons for the delay.

(3) The notification referred to in paragraph (1) must –

(a) describe the nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;

(b) communicate the name and contact details of the data protection officer or other contact point where more information can be obtained;

(c) describe the likely consequences of the personal data breach; and

(d) describe the measures taken or proposed to be taken by the controller to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.

(4) Where, and in so far as, it is not possible to provide the information at the same time, the information may be provided in phases without undue further delay.

(5) The controller must document any personal data breaches, including the facts relating to the personal data breach, its effects and the remedial action taken, in such detail as will enable the Authority to verify compliance with this Article.

(6) If the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons, the controller must communicate the breach to the data subject –

(a) without undue delay; and

(b) in clear and plain language describing the nature of the personal data breach; and

(c) giving the information referred to in paragraph (3)(b) to (d).

(7) Despite paragraph (6) communication is not required if –

(a) the controller has implemented proportionate technical and organizational protection measures, and those measures were applied to the personal data affected by the personal data breach, in particular measures that render the personal data unintelligible to any person who is not authorized to access it, such as encryption;

(b) the controller has taken subsequent measures which ensure that the high risk to the rights and freedoms of data subjects referred to in paragraph (6) is no longer likely to materialize; or

(c) it would involve disproportionate effort, in which case there must instead be a public communication or similar measure whereby the data subjects are informed in an equally effective manner.

(8) If the controller has not already communicated the personal data breach to the data subject, the Authority, having considered the likelihood of the personal data breach resulting in a high risk to the rights and freedoms of natural persons, may require it to do so or may decide that any of the conditions referred to in paragraph (7) are met.

PART 4

JOINT SECURITY DUTY AND DUTIES OF PROCESSORS

21 Security of personal data

(1) Controllers and processors must implement technical and organizational measures against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data that are proportionate to the risk of harm posed to the rights of data subjects by such events.

(2) The technical measures that the controller may take to ensure a level of security appropriate to the risk include –

(a) the pseudonymization and encryption of personal data;

(b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

(c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;

(d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing.

(3) Adherence to a code or evidence of certification may provide evidence that an individual controller has complied with paragraph (1).

(4) Controllers and processors must take reasonable steps to ensure the proper performance of duties by any person under the controller's or the processor's authority.

(5) If processing of personal data is carried out by a processor on behalf of a controller, the controller must –

(a) choose a processor providing sufficient guarantees in respect of the technical and organizational security measures governing the processing to be carried out; and

(b) take reasonable steps to ensure compliance with those measures.

(6) If processing of personal data is carried out by a processor on behalf of a controller, the processing must be carried out under a contract –

(a) that is made or evidenced in writing;

(b) under which the processor is to act only on instructions from the controller; and

(c) that requires the processor to comply with obligations equivalent to those imposed on a controller under this Article.

(7) The Minister may, by Order, amend the technical measures in paragraph (2).

(8) In this Article "proportionate" means proportionate having regard to –

(a) the nature, scope, context and purposes of processing;

(b) the risk and likelihood of prejudice to the rights of data subjects;

(c) best practices in technical and organizational measures;

(d) the state of technological development; and

(e) the costs of implementation.

22 General obligations on processors

(1) A processor must –

(a) if established in Jersey, cause or permit personal data to be processed only if the processor meets the requirement to be registered under Article 17 of the Authority Law;

(b) pay such charges to the Authority as Regulations under Article 18 of the Authority Law may prescribe;

(c) comply with the requirements on processors set out in Articles 19 and 23;

(d) implement appropriate technical and organizational security measures to protect personal data against accidental or unlawful destruction or loss, alteration, unauthorized disclosure or access;

(e) keep records of the processor's data processing activities in accordance with this Law and disclose them on request to the Authority;

(f) ensure that any personal data that it processes are kept confidential;

(g) notify the controller without undue delay after becoming aware of a personal data breach;

(h) appoint a data protection officer if required to do so by Article 24;

(i) comply with Article 66 regarding cross-border data transfers;

(j) co-operate with any requests of the Authority under this Law or the Authority Law; and

(k) comply with any order of the Authority under Article 25 of, and an information notice of the Authority under paragraph 1 of Schedule 1 to, the Authority Law.

(2) Paragraph (1)(e) does not apply in the case of organizations with fewer than 250 employees unless the processing –

(a) is likely to result in a risk to the rights and freedoms of data subjects;

(b) is not occasional; or

(c) includes special category data or relates to criminal convictions or related security measures.

(3) A processor is liable to a data subject for any damage suffered as a result of processing that contravenes this Law.

(4) However, the processor is liable for the damage only where –

(a) it has not complied with the obligations placed on processors by this Law; or

(b) it acted outside of or contrary to the lawful instructions of the controller.

(5) Adherence to a code or evidence of certification may provide evidence that an individual processor has complied with a particular obligation of this Article.

(6) Regulations may prescribe mandatory terms that must be implied into processing contracts.

23 Processing obligations

(1) The processor and any person acting under the authority of the controller or of the processor who has access to personal data, must not process those data unless –

(a) instructed to do so by the controller; or

(b) required to do so by the relevant law.

(2) Unless required to do so by the relevant law, a processor is taken to be a controller if the processor processes personal data other than in accordance with the instructions of the controller.

(3) A processor must maintain a record of all categories of processing activities carried out on behalf of a controller, containing –

(a) the name and contact details of the processor or processors and of each controller on behalf of which the processor is acting, and, where applicable, of the controller's or the processor's representative, and the data protection officer;

(b) the categories of processing carried out on behalf of each controller;

(c) where applicable, transfers of personal data to a third country or an international organization, including the identification of that third country or international organization and, in the case of transfers referred to in paragraph 9 of Schedule 3, the documentation of suitable safeguards; and

(d) where possible, a general description of the technical and organizational security measures referred to in Article 21.

PART 5

DATA PROTECTION OFFICER

24 Appointment of data protection officer

(1) The controller and the processor must appoint a data protection officer in any case where –

(a) the processing is carried out by a public authority, except for courts acting in their judicial capacity;

(b) the core activities of the controller or the processor consist of processing operations that, by virtue of their nature, scope or purposes, require regular and systematic monitoring of data subjects on a large scale;

(c) the core activities of the controller or the processor consist of processing special category data on a large scale; or

(d) it is required by the relevant law.

(2) A group of undertakings may appoint a single data protection officer provided that the data protection officer is easily accessible from each establishment.

(3) Where the controller or the processor is a public authority, a single data protection officer may be appointed for several such authorities or bodies, taking account of their organizational structure and size.

(4) However, a single data protection officer is permissible in the circumstances set out in paragraph (2) or (3) only if the officer is easily accessible to –

(a) all data subjects;

(b) the Authority; and

(c) the controller or processor who appointed the officer along with such of the controller or processor's employees as carry out data processing.

(5) In cases other than those referred to in paragraph (1), the controller or processor or associations and other bodies representing categories of controllers or processors may or, where required by the relevant law, must, appoint a data protection officer and the data protection officer may act for such associations and other bodies representing controllers or processors.

(6) The data protection officer must be appointed on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and the ability to fulfil the duties set out in Article 26.

(7) The data protection officer may be a staff member of the controller or processor, or fulfil the duties on the basis of a service contract.

(8) The controller or the processor must publish the contact details of the data protection officer and communicate them to the Authority.

(9) Regulations may amend paragraph (1) so as to vary the circumstances in which a data protection officer must be appointed.

(10) In this Article "core activities" means the primary activities of the controller and does not mean the activity of processing of personal data where this is an ancillary activity.

25 Position of data protection officer

(1) The controller and the processor –

(a) must ensure that the data protection officer is involved, properly and in a timely manner, in all issues that relate to the protection of personal data;

(b) must support the data protection officer in performing the duties set out in Article 26 by providing –

(i) the resources, and

(ii) access to personal data and processing operations,

necessary to carry out those duties and to maintain his or her expert knowledge;

(c) must ensure that the data protection officer operates independently and does not receive any instructions regarding the performance of those duties other than to perform them to the best of the officer's ability and in a professional and competent manner;

(d) must not dismiss or penalize the data protection officer for performing his or her duties other than for failing to perform them as required by sub-paragraph (c).

(2) The data protection officer must directly report to the highest management level of the controller or the processor.

(3) Data subjects may contact the data protection officer with regard to any issue related to processing of their personal data and to the exercise of their rights under this Law.

(4) The data protection officer must treat information relating to the performance of his or her duties as confidential, except to the extent that this would be incompatible with his or her duties under this Law or the Authority Law.

(5) The data protection officer may carry out other functions but the controller or processor must ensure that any such functions do not result in any conflict of interest as regards the data protection officer's duties under this Law.

26 Duties of data protection officer

(1) The data protection officer's duties include –

(a) informing and advising the controller or the processor and the employees who carry out processing of their obligations under the relevant law;

(b) monitoring compliance with this Law and any other enactment relating to data protection and with the policies of the controller or processor in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations, and the related audits;

(c) providing advice where requested as regards a data protection impact assessment and monitoring the process covered by it;

(d) co-operating with the Authority on request;

(e) acting as the contact point for the Authority on data processing matters;

(f) acting as a contact point for data subjects with regard to all issues relating to the processing of their personal data and exercise of their rights under this Law;

(g) with respect to data protection impact assessments, advising on –

(i) whether or not to carry out the assessment,

(ii) the methodology that should be followed in carrying it out,

(iii) whether to carry it out in-house or to outsource it,

(iv) what safeguards (including technical and organizational measures) to apply to mitigate any risks to the rights and interests of data subjects,

(v) whether or not the assessment has been carried out correctly and whether its conclusions (whether or not to go ahead with the processing and what safeguards are to apply) are in compliance with this Law, and

(vi) any consultation with the Authority under Article 17 or 18.

(2) The data protection officer, in the performance of his or her duties, must have due regard to the risk associated with processing operations, taking into account the nature, scope, context and purposes of processing.

(3) Regulations may amend this Article so as to vary the duties of a data protection officer.

PART 6

RIGHTS OF DATA SUBJECTS

27 Handling of requests by data subjects

(1) Where so requested by the data subject under the following provisions of this Part, a controller must take such action as the controller considers appropriate, and provide information on the action taken to that data subject, without undue delay and in any event within 4 weeks of receipt of the request.

(2) The period of 4 weeks may be extended by a further 8 weeks where necessary, taking into account the complexity and number of the requests, and the controller must inform the data subject of any such extension within 4 weeks of receipt of the request, together with the reasons for the delay.

(3) Where the data subject makes the request by electronic means, the information must be provided by electronic means where possible, unless otherwise requested by the data subject.

(4) If the controller does not take any action under paragraph (1), the controller must inform the data subject without delay and at the latest within 4 weeks of receipt of the request of the reasons for not taking action and on the possibility of lodging a complaint with the Authority and seeking a judicial remedy.

(5) Specified information provided under Article 12 and any communication or other action taken under Article 20 or any provision of this Part must be provided free of charge.

(6) Where requests from a data subject are manifestly vexatious, unfounded or excessive, in particular because of their repetitive character, the burden of proving which is on the controller, the controller may either –

(a) charge a reasonable fee taking into account the administrative costs of providing the information or communication or taking the other action requested; or

(b) refuse to act on the request.

(7) Without limiting Article 5, where the controller has reasonable doubts concerning the identity of the individual making any request under this Part, the controller may request the provision of additional information necessary to confirm the identity of the data subject and is not obliged to enable the individual's rights to be exercised unless supplied with that information.

(8) The controller must communicate any rectification or erasure of personal data or restriction of processing carried out in accordance with Articles 31 to 33 to each recipient to whom the personal data have been disclosed, unless this is impossible or involves disproportionate effort, and must inform the data subject about those recipients if the data subject requests it.

(9) Regulations may amend this Article so as to vary any of the requirements specified, or any provision as to the manner in which requests to exercise those requirements must or may be made.

28 Right of access requests: general

(1) An individual is entitled to be informed by a controller whether personal data of which that individual is the data subject are being processed by or on behalf of that controller, and, if that is the case, to be given information as to –

(a) the purposes for which they are being or are to be processed by or on behalf of that controller;

(b) the categories of personal data concerned;

(c) the recipients or classes of recipients to whom they are or may be disclosed by or on behalf of that controller, in particular recipients in third countries or international organizations;

(d) where possible, the envisaged period for which the personal data will be stored or, if not possible, the criteria used to determine that period;

(e) the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject under Articles 31 to 33 or to object to such processing;

(f) the right to lodge a complaint with the Authority;

(g) where the personal data are not collected from the data subject, any available information as to their source; and

(h) the existence of automated decision-making referred to in Article 38(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

(2) Where personal data are transferred to a third country or to an international organization, the data subject has the right to be informed of the appropriate safeguards under Article 67 relating to the transfer.

(3) Without limiting the rights and freedoms of other persons, a data subject is entitled to obtain from the relevant controller the following in intelligible form –

(a) the information constituting any personal data of which the individual is the data subject and a copy of that data; and

(b) further copies of those data on payment of a fee of such amount as will enable the controller to cover its administrative costs.

(4) If the supplying of information under this Article would require the disclosing of information relating to another individual who can be identified from that information, the controller is not obliged to enable such information to be supplied unless –

(a) the other individual has consented to the disclosure of the information to the person making the request; or

(b) it is reasonable in all the circumstances to do so without the consent of the other individual.

(5) In paragraph (4), the reference to information relating to another individual includes a reference to information identifying that individual as the source of the information sought in the request.

(6) Paragraph (4) is not to be construed as excusing a controller from communicating so much of the information sought in the request as can be communicated without disclosing the identity of the other individual concerned, whether by the omission of names or other identifying particulars or otherwise.

(7) For the purposes of paragraph (4)(b), regard must be had, in particular, to –

(a) any duty of confidentiality owed to the other individual;

(b) any steps taken by the controller to seek the consent of the other individual;

(c) whether the other individual is capable of giving consent; and

(d) any express refusal of consent by the other individual.

29 Right of access requests: information contained in health records

(1) A controller who is not a health professional must not, on the ground of the exemption in Article 61(2), refuse a request under Article 28 for information contained in a health record unless –

(a) after receiving the request, the controller consulted the appropriate health professional on the question whether the exemption applies and obtained his or her a written opinion that it does so apply; or

(b) the following conditions are satisfied –

(i) the controller consulted a health professional before receiving the request,

(ii) the health professional was the health professional who would, if the controller had carried out the consultation under sub-paragraph (a), have been the appropriate health professional, and

(iii) the controller obtained a written opinion from the health professional that the exemption applied to the information.

(2) The conditions referred to in paragraph (1)(b) are taken not to be satisfied if the opinion was obtained –

(a) before the start of the period of 26 weeks that ends at the beginning of the 4-week period referred to in Article 27(1) in respect of the request; or

(b) within that period of 26 weeks but it is reasonable in all the circumstances to consult the appropriate health professional again.

(3) A controller who is not a health professional must not supply information contained in a health record in response to a request under Article 28 unless the controller has first consulted the appropriate health professional on the question whether the exemption set out in Article 61(2) applies with respect to the information.

(4) Paragraph (3) does not operate in relation to a request to the extent that the request relates to information that the controller is satisfied has previously been supplied to the data subject or is already within the knowledge of the data subject.

(5) Paragraph (3) does not operate in relation to a request if the following conditions are satisfied –

(a) the controller consulted a health professional before receiving the request;

(b) the health professional was the health professional who would, if the controller had carried out the consultation under paragraph (3), have been the appropriate health professional;

(c) the controller obtained a written opinion from the health professional that the exemption set out in Article 61(2) did not apply with respect to the information that is the subject of the request.

(6) In this Article, "appropriate health professional" means –

(a) if the controller is the Minister for Social Security and the personal data are processed in connection with the exercise of the functions conferred on him or her in respect of health insurance or social security, a health professional who appears to the controller to have the necessary experience and qualifications to advise on the matters to which the information relates;

(b) in other cases, the health professional who appears to the controller to be currently or to have been most recently responsible for the clinical care of the data subject in connection with the matters to which the information relates.

(7) If, in the application of paragraph (6), more than one health professional would be chosen, the appropriate health professional is the one who appears to the controller to be the most suitable to advise on the matters to which the information relates.

(8) If, in the application of paragraph (6), no health professional would be chosen, the appropriate health professional is a health professional who appears to the controller to have the necessary experience and qualifications to advise on the matters to which the information relates.

30 Treatment of right of access requests

(1) Regulations may provide that, in such cases as may be prescribed, a request under Article 28 for information referred to in any provision of Article 28 is to be treated as a request for information referred to in any other provision of Article 28.

(2) Article 28(1)(h) is not to be regarded as requiring the provision of information as to the logic involved in any decision-taking to the extent that the information constitutes a trade secret.

(3) Information supplied under Article 28 must be supplied by reference to the data in question at the time when the request for the data is received, except that account may be taken 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.

(4) For the purposes of Article 28(5) and (7), another individual can be identified from the information being disclosed if the individual can be identified from that information, or from that and any other information that, in the reasonable belief of the controller, is likely to be in, or to come into, the possession of the data subject making the request.

31 Right to rectification

(1) A data subject who disputes the accuracy or completeness of personal data may make a written request to the controller to rectify or change the personal data, stating the inaccuracy or explaining why the personal data is incomplete.

(2) Before complying with a request under paragraph (1) the controller may require from the data subject such further information as may be appropriate regarding the purposes of processing the data in order to verify that the requested rectification or completion is accurate.

(3) On consideration of a request under paragraph (1), the controller must –

(a) where the controller is able, by taking reasonable steps, to confirm that the personal data are inaccurate or incomplete, rectify or complete the data;

(b) where the controller is satisfied as to the accuracy and completeness of the personal data, take no action regarding the data; or

(c) where it is not reasonable to expect the controller to confirm or verify the accuracy or completeness of the personal data, add to the personal data a statement to the effect that the data subject disputes the accuracy or (as the case may be) completeness of that personal data.

(4) Without limiting paragraph (2), before taking any action under paragraph (3)(c) the controller may request that the data subject provide a written statement that includes information as to the additional data needed to rectify or complete it.

32 Right to erasure

(1) Where so required by the data subject the controller must erase personal data without undue delay where one of the following grounds applies –

(a) the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;

(b) the data subject withdraws consent given under paragraph 1 or 6 of Schedule 2 and there is no other legal ground for the processing;

(c) the data subject objects to the processing –

(i) under Article 35, where there are no overriding legitimate grounds or reasons of public interest for the processing, or

(ii) under Article 36;

(d) the personal data have been unlawfully processed;

(e) the personal data have to be erased for compliance with a legal obligation under the relevant law to which the controller is subject;

(f) the personal data have been collected in relation to the offer of information society services directly to a child who is unable to give valid consent under Article 11(4).

(2) Where the controller has made the personal data public and is obliged under paragraph (1) to erase it, the controller, taking account of available technology and the cost of implementation, must take reasonable steps, including technical measures, to inform other controllers that are processing the personal data that the data subject has requested the erasure by such controllers of any links to, or copy or replication of, those personal data.

(3) Paragraphs (1) and (2) do not apply to the extent that processing is necessary –

(a) for exercising the rights of freedom of expression and information;

(b) for compliance with a legal obligation which requires processing by the relevant law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

(c) for reasons of public interest in the area of public health in accordance with paragraph 16 of Schedule 2*;*

(d) for any purposes described in paragraph 17 of Schedule 2 (archiving and research) in so far as the right referred to in paragraph (1) is likely to render impossible or seriously impair the achievement of the objectives of that processing; or

(e) for the establishment, exercise or defence of legal claims.

(4) Regulations may prescribe further circumstances in which the right to erasure of personal data may or may not be exercised including the establishment of time limits for that erasure.

33 Right to restriction of processing

(1) The data subject has the right to obtain from the controller restriction of processing where one of the following circumstances applies –

(a) the accuracy of the personal data is contested by the data subject, for such a period as will enable the controller to verify the accuracy of the personal data;

(b) the processing is unlawful and the data subject opposes the erasure of the personal data and requests the restriction of their use instead;

(c) the controller no longer needs the personal data for the purposes of the processing, but they are required by the data subject for the establishment, exercise or defence of legal claims;

(d) the data subject has objected to processing under Article 35 pending the verification whether the legitimate grounds or reasons of public interest of the controller override those of the data subject.[6]

(2) Where processing has been restricted under paragraph (1), the personal data affected, with the exception of storage, may be processed only –

(a) with the data subject's consent;

(b) for the purposes set out in paragraph 12 of Schedule 2 (legal proceedings etc.);

(c) for the purposes set out in paragraph 3 or 9 of Schedule 2 (vital interests); or

(d) for the purposes set out in paragraph 14 of Schedule 2 (public interest).

(3) The controller must inform a data subject who has obtained restriction of processing under paragraph (1) before lifting the restriction of processing.

34 Right to data portability

(1) Where paragraph (2) applies the data subject has the right –

(a) to receive the personal data concerning him or her that he or she has provided to a controller in a structured, commonly used and machine-readable format; and

(b) to transmit those data to another controller where technically feasible without hindrance from the controller to which the personal data have been provided.

(2) This paragraph applies where –

(a) the processing is based on consent under paragraph 1 or 6 of Schedule 2 or on a contract under paragraph 2 of that Schedule*;* and

(b) the processing is carried out by automated means.

(3) In exercising his or her right to data portability under paragraph (1), the data subject has the right to have the personal data transmitted directly from one controller to another, where technically feasible.

(4) The exercise of the right referred to in paragraph (1) does not affect the right to erasure under Article 32 save that the right to erasure does not apply to processing necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

(5) The right referred to in paragraph (1) does not apply to the extent that to comply with it would adversely affect the rights and freedoms of others.

35 Right to object to processing for purpose of public functions or legitimate interests

(1) Where the processing of any personal data is based exclusively on the conditions in paragraph 4 (public functions) or 5 (legitimate interests) of Schedule 2, or any combination of those conditions –

(a) the data subject has the right to object to the processing; and

(b) the controller must notify the data subject of the processing and the data subject's right to object to it.

(2) The notification required by paragraph (1)(b) must be given to the data subject –

(a) at or before the time of the controller's first communication with the data subject;

(b) explicitly; and

(c) separately from any other matters notified to the data subject.

(3) Subject to paragraph (4), the controller must cease the processing if the data subject objects to the processing in accordance with paragraph (1)(a) by written notice to the controller, including, where the processing is in the context of information society services, by notice given by automated means and, if appropriate, using technical specifications to do so.

(4) Paragraph (3) does not apply where the controller demonstrates that there are compelling legitimate or public interests in continuing to process the data that –

(a) outweigh the interests, rights and freedoms of the data subject; or

(b) are necessary for the establishment, exercise or defence of legal claims.

36 Right to object to processing for direct marketing purposes

(1) Where the processing of any personal data is for direct marketing purposes –

(a) the data subject has the right to object to the processing to the extent that it is related to that direct marketing; and

(b) the controller must notify the data subject of the processing and the right to object.

(2) The notification required by paragraph (1)(b) must be given to the data subject –

(a) at or before the time of the controller's first communication with the data subject;

(b) explicitly; and

(c) separately from any other matters notified to the data subject.

(3) The controller must cease the processing if the data subject objects to the processing in accordance with paragraph (1)(a) by written notice to the controller, including, where the processing is in the context of information society services, notice given by automated means and, if appropriate, using technical specifications to do so.

37 Right to object to processing for historical or scientific purposes

(1) A data subject has the right to object to any processing of personal data where the lawfulness of the processing is based solely on the processing being necessary for any of the purposes set out in paragraph 17 of Schedule 2 (archiving and research).

(2) Where a data subject has objected in accordance with paragraph (1) to any processing, the controller must cease the processing unless –

(a) the purpose for which the personal data is processed relates to an objective that is in the public interest; and

(b) the public interest in the objective outweighs the data subject's interests.

38 Right regarding automated individual decision-making

(1) The data subject has the right not to be subject to a decision based solely on automated processing that produces legal effects or similarly significantly affects him or her.

(2) Paragraph (1) does not apply if the decision –

(a) is necessary for entering into, or performance of, a contract between the data subject and a controller;

(b) is authorized by the relevant law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or

(c) is based on the data subject's explicit consent.

(3) In the cases referred to in paragraph (2)(a) and (c), the controller must implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, including the right to obtain human intervention on the part of the controller, so that the data subject can express his or her point of view and contest the decision.

(4) Decisions referred to in paragraph (2) must not be based on special category data unless paragraph 6 (consent) or 14 (public interest) of Schedule 2 applies and appropriate safeguards of the data subject's rights and freedoms and legitimate interests are in place.

39 Certain contractual terms relating to health records void

(1) A term or condition of a contract is void in so far as it purports to require an individual to supply, or produce, to any other person a record to which this Article applies, or with a copy of such a record or a part of such a record.

(2) This Article applies to any record that may be obtained by a data subject in the exercise of the right conferred by Article 28 and consists of the information contained in any health record.

PART 7

EXEMPTIONS

DIVISION 1 – GENERAL AND WIDER EXEMPTIONS

40 Effect of this Part

Except as provided by or under this Part, the transparency and subject rights provisions have effect despite any enactment or rule of law (whether an enactment or rule of law of Jersey or of another jurisdiction) prohibiting or restricting the disclosure, or authorizing the withholding, of information.

41 National security

(1) The processing of personal data necessary for the purpose of safeguarding national security is exempt from –

(a) the data protection principles;

(b) the transparency and subject rights provisions;

(c) the offence in Article 71; and

(d) Parts 3 and 4 of the Authority Law.

(2) A certificate signed by the Minister for Justice and Home Affairs certifying that exemption from all or any of those provisions is or at any time was required for the purpose there mentioned in respect of any personal data is sufficient evidence of that fact.[7]

(3) The certificate may identify the personal data to which it applies by means of a general description and may, but need not, be expressed to have prospective effect.

(4) A person directly affected by the issue of the certificate may apply to the Royal Court for review of the decision to issue the certificate.

(5) If, on such an application, the Court finds that the Minister for Justice and Home Affairs did not have reasonable grounds for the decision to issue the certificate, the Court may quash the decision and void the certificate.[8]

(6) The certificate is conclusively presumed to apply unless a court determines otherwise.

(7) In proceedings under paragraph (4) a party may claim that a certificate identifying the personal data to which it applies by means of a general description does not apply to the personal data in question.

(8) A document purporting to be a certificate under this Article must be received in evidence and taken to be such a certificate unless the contrary is proved.

(9) A document that purports to be certified by or on behalf of the Minister for Justice and Home Affairs as a true copy of a certificate is evidence of the certificate in any legal proceedings.[9]

(10) No power conferred by any provision of Part 9 of this Law or Part 4 of the Authority Law may be exercised in relation to personal data that are exempt from that provision under this Article.

42 Criminal record certifications

Despite anything to the contrary in this Law a person may require another person to provide any criminal record certificate that may lawfully be obtained by, or in relation to, the data subject under any provision of the Police Act 1997 of the United Kingdom as it extends to Jersey.

43 Manual data held by public authorities

Personal data falling within paragraph (d) of the definition "data" in Article 1(1) are exempt from the provisions of this Law except for Articles 28 to 31, this Part and Articles 68 and 71.

44 Academic, journalistic, literary or artistic material

(1) Personal data that are processed only for special purposes are exempt from the provisions of this Law except for Articles 68 and 69 if –

(a) the processing is undertaken with a view to the publication by any person of any academic, journalistic, literary or artistic material;

(b) having regard in particular to the importance of freedom of expression, the publication of the data would be in the public interest; and

(c) that public interest outweighs the interests of the data subject and the application of those provisions.

(2) In considering whether publication would be in the public interest, regard may be had to the controller's compliance with any code of practice that is relevant to the publication in question and the extent to which publication is regulated by any other body, whether in Jersey or not.

(3) Regulations may make such further provision as may be necessary or expedient as to the balancing of the rights of data subjects and the public interest in freedom of expression in relation to the processing of data for special purposes.

(4) In this Article "freedom of expression" means the right protected under Article 10 of the European Convention of Human Rights and Fundamental Freedoms as incorporated in the Human Rights (Jersey) Law 2000.

DIVISION 2 – EXEMPTIONS FROM TRANSPARENCY AND SUBJECT RIGHTS PROVISIONS

45 Crime and taxation

(1) The processing of personal data is exempt from the transparency and subject rights provisions where it is carried out for any of the following purposes –

(a) the prevention, detection, or investigation, anywhere of crime;

(b) the apprehension, or prosecution, anywhere of persons who have committed or are alleged to have committed, an offence anywhere;

(c) the assessment, or collection, anywhere of any tax or duty, or of any imposition of a similar nature, wherever due;

(d) the disclosure to a police officer under Article 32 or 34A, or any Order made under Article 37, of the Proceeds of Crime (Jersey) Law 1999; or

(e) the reporting of suspicious activities under any Tax Information Exchange Agreement,

if the application of those provisions would be likely to prejudice any of those purposes.

(2) Personal data that –

(a) are processed for the purpose of discharging functions under any Law; and

(b) consist of information obtained for such a purpose from a person who had it in the person's possession for any of the purposes referred to in paragraph (1)(a) to (e),

are exempt from the transparency and subject rights provisions to the same extent as personal data processed for any of the purposes referred to in paragraph (1)(a) to (e) if the application of those provisions would be likely to prejudice any of those purposes.

(3) Personal data processed by a public authority are exempt from the transparency and subject rights provisions to the extent to which –

(a) they consist of a classification applied to the data subject as part of a system of risk assessment operated by that authority for any of the purposes set out in paragraph (4); and

(b) the exemption is required in the interests of the operation of the system.

(4) The purposes are –

(a) the assessment or collection of any tax or duty or any imposition of a similar nature;

(b) the prevention or detection of crime; or

(c) the apprehension or prosecution of persons who commit an offence, if the offence concerned involves any unlawful claim for any payment out of, or any unlawful application of, public funds.

46 Corporate finance

(1) If personal data are processed for the purposes of, or in connection with, a corporate finance service provided by a relevant person –

(a) the data are exempt from the transparency and subject rights provisions in any case to the extent to which either –

(i) the application of those provisions to the data could affect the price of any instrument already in existence or that is to be or may be created, or

(ii) the controller reasonably believes that the application of those provisions to the data could affect the price of any such instrument; and

(b) to the extent that the data are not exempt from the transparency and subject rights provisions by virtue of sub-paragraph (a), they are exempt from those provisions if the exemption is required for the purpose of safeguarding an important economic or financial interest of Jersey.

(2) For the purposes of paragraph (1)(b) a matter may adversely affect an important economic or financial interest of Jersey if it has an inevitable prejudicial effect on –

(a) the orderly functioning of financial markets whether in Jersey or elsewhere; or

(b) the efficient allocation of capital within an economy whether in Jersey or elsewhere,

that would result from the application (whether on an occasional or on a regular basis) of the transparency and subject rights provisions to data to which paragraph (3) applies.

(3) The data to which this paragraph applies are any personal data to which the application of the transparency and subject rights provisions could, in the reasonable belief of the relevant person affect –

(a) a decision, in Jersey or elsewhere, of a person whether or not to deal in, subscribe for, or issue, an instrument that is already in existence or is to be or may be created; or

(b) a decision, in Jersey or elsewhere, of a person to act or not to act in a way that is likely to have an effect on a business activity including an effect on –

(i) the industrial strategy of a person (whether the strategy is, or is to be, pursued independently or in association with others),

(ii) the capital structure of a business, or

(iii) the legal or beneficial ownership of a business or asset.

(4) In this Article –

"corporate finance service" means a service consisting in –

(a) underwriting in respect of issues of, or the placing of issues of, any instrument;

(b) advice to businesses on capital structure, industrial strategy and related matters and advice and service relating to mergers and the purchase of businesses; or

(c) services relating to such underwriting as is mentioned in paragraph (a);

"instrument" means an instrument listed in section B of the Annex to the European Council Directive on investment services in the securities field (93/22/EEC) or an investment within the meaning of the Financial Services (Jersey) Law 1998;

"price" includes value;

"relevant person" means –

(a) a registered person within the meaning of the Financial Services (Jersey) Law 1998 (being a person registered under that Law in respect of investment

business within the meaning of that Law) or a person who is exempted by that Law from the obligation to be registered under that Law in respect of such investment business;

(b) a person who is an authorized person under the Financial Services and Markets Act 2000 of the United Kingdom, or is an exempt person under that Act, in respect of such investment business;

(c) a person who may be prescribed by Regulations for the purposes of this Article;

(d) a person who, in the course of the person's employment, provides to the person's employer a service falling within paragraph (b) or (c) of the definition of "corporate finance service"; or

(e) a partner who provides to other partners in the partnership a service falling within either of those paragraphs.

47 Trusts

Personal data in respect of a trust are exempt from the transparency and subject rights provisions to the extent that –

(a) in the case of a trust the proper law of which is the law of Jersey, the personal data consist of information the withholding of which by the relevant controller is permitted by Article 29 of the Trusts (Jersey) Law 1984 or the disclosure, erasure or rectification of which by the relevant controller would be contrary to a prohibition or restriction under any rule of law of Jersey; or

(b) in the case of a trust the proper law of which is the law of a jurisdiction other than Jersey, the personal data consist of information the withholding of which by the relevant controller is permitted by or under the law of that jurisdiction or the disclosure, erasure or rectification of which by the relevant controller would be contrary to a prohibition or restriction under the law of that jurisdiction.

48 Financial loss, charities, health and safety, maladministration and practices contrary to fair trading

(1) Personal data processed for the purposes of discharging any of the functions to which this Article applies are exempt from the transparency and subject rights provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of the function.

(2) This Article applies to any function listed in paragraph (3) that is –

(a) conferred on any person by or under any enactment;

(b) conferred on the Crown or a public authority; or

(c) of a public nature and exercised in the public interest.

(3) The functions are –

(a) a function designed for protecting members of the public against –

(i) financial loss due to dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons concerned in the provision of banking, insurance, investment or other financial services or in the management of bodies corporate,

(ii) financial loss due to the conduct of discharged or undischarged bankrupts, or

(iii) dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorized to carry on any profession or other activity;

(b) a function designed for protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration;

(c) a function designed for protecting the property of charities from loss or misapplication;

(d) a function designed for the recovery of the property of charities;

(e) a function designed for securing the health, safety or welfare of persons at work;

(f) a function designed for protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.

(4) This Article applies to a function that is conferred by or under any enactment on a prescribed person, or body that is designed –

(a) to protect members of the public against –

(i) maladministration by public bodies,

(ii) failures in services provided by public bodies, or

(iii) a failure by a public body to provide a service which it was a function of the body to provide;

(b) to protect members of the public against conduct that may adversely affect their interests by persons carrying on a business;

(c) to regulate agreements, or conduct, that have as their object or effect the prevention, restriction or distortion of competition in connection with any commercial activity; or

(d) to regulate conduct on the part of one or more businesses that amounts to the abuse of a dominant position in a market.

(5) This Article also applies to the following functions –

(a) any function relating to an investigation by the Jersey Financial Services Commission under –

(i) Article 22 of the Collective Investment Funds (Jersey) Law 1988,

(ii) Article 28 of the Banking Business (Jersey) Law 1991,

(iii) Part 19 of the Companies (Jersey) Law 1991,

(iv) Article 11 of the Insurance Business (Jersey) Law 1996,

(v) Article 33 of the Financial Services (Jersey) Law 1998,

(vi) Regulation 31 of the Alternative Investment Funds (Jersey) Regulations 2012,

including the functions of any inspector or competent person appointed under any of those provisions;

(b) any function conferred on the Jersey Resolution Authority under Article 7 of the Bank (Recovery and Resolution) (Jersey) Law 2017;

(c) any function under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 of a supervisory body designated under Article 6 of that Law (including the functions of any competent person appointed under Article 31 of that Law);

(d) any function conferred on the Office of the Financial Services Ombudsman or on an Ombudsman, under the Financial Services Ombudsman (Jersey) Law 2014;

(e) any function conferred on the Jersey Financial Services Commission by the Financial Services Commission (Jersey) Law 1998;

(f) any function conferred on the registrar of companies appointed under Article 196 of the Companies (Jersey) Law 1991, arising under that Law or any other enactment;

(g) any function (whether or not under any of the Laws referred to in this paragraph) that may be prescribed by Regulations.

49 Management forecasts etc.

Personal data processed for the purposes of management forecasting or managing planning to assist the controller in the conduct of any business or other activity are exempt from the transparency and subject rights provisions to the extent to which the application of those provisions would be likely to prejudice the conduct of that business or other activity.

50 Negotiations

Personal data that consist of records of the intentions of the controller in relation to any negotiations with the data subject are exempt from the transparency and subject rights provisions to the extent to which the application of those provisions would be likely to prejudice those negotiations.

51 Information available to public by or under enactment

Personal data are exempt from the transparency and subject rights provisions if the data consist of information that the controller is obliged by or under any enactment to make available to the public, whether by making it available for inspection or publishing it in another manner, and whether gratuitously or on payment of a fee.

52 Disclosure contrary to certain enactments

Personal data that consist of information the disclosure of which by the relevant controller would be contrary to a prohibition or restriction under any of the following enactments are exempt from the transparency and subject rights provisions –

(a) Articles 24(5), 27(12) and 30(4)(b) of the Adoption (Jersey) Law 1961;

(b) Article 19B of the Misuse of Drugs (Jersey) Law 1978;

(c) Article 35 of the Proceeds of Crime (Jersey) Law 1999;

(d) Article 35 of the Terrorism (Jersey) Law 2002.

53 Confidential references given by the controller

Personal data are exempt from the transparency and subject rights provisions if they consist of a reference given or to be given in confidence by the controller for the purposes of –

(a) the education, training or employment, or prospective education, training or employment, of the data subject;

(b) the appointment, or prospective appointment, of the data subject to any office; or

(c) the provision, or prospective provision, by the data subject of any service.

54 Examination scripts etc.

Personal data consisting of information recorded by candidates during an academic, professional or other examination are exempt from the transparency and subject rights provisions.

55 Crown or judicial appointments and honours

Personal data are exempt from the transparency and subject rights provisions if processed for the purposes of assessing a person's suitability for –

(a) employment by or under the Crown or any office to which appointments are made by Her Majesty;

(b) any judicial office or the office of Queen's Counsel; or

(c) the conferring by the Crown of any honour or dignity.

56 Armed forces

Personal data are exempt from the transparency and subject rights provisions to the extent to which the application of those provisions would be likely to prejudice the effectiveness in combat of any of the armed forces of the Crown.

57 Legal professional privilege

Personal data are exempt from the transparency and subject rights provisions if the data consist of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

58 Self-incrimination

(1) Personal data are exempt from the transparency and subject rights provisions to the extent that compliance would, by revealing evidence of the commission of an offence (other than an offence under this Law or the Authority Law), expose the person to proceedings for that offence.

(2) Information provided in response to a request under the transparency and subject rights provisions or any order enforcing them is not admissible against the person in proceedings for an offence under this Law or the Authority Law.

59 States Assembly privilege

(1) Personal data are exempt from the transparency and subject rights provisions to the extent required to avoid an infringement of the privileges of the States Assembly.

(2) Except as provided by paragraph (3), a certificate signed by the Greffier of the States certifying that such an exemption is required to avoid an infringement of the privileges of the States Assembly is conclusive evidence of that fact.

(3) A person aggrieved by the decision of the Greffier of the States to issue a certificate under paragraph (2) may appeal to the Royal Court on the grounds that the Greffier did not have reasonable grounds for issuing the certificate.

(4) The decision of the Royal Court on the appeal is final.

DIVISION 3 – EXCEPTIONS TO ARTICLE 27 OR 28

60 Examination marks

(1) Where a request under Article 28 is made for or in relation to marking data, the application of Article 27 to the request is modified so that if the day when the controller receives the request under that Article falls before the publication day, for the period expressed as "within 4 weeks of receipt of the request" in Article 27(1) there is substituted the period set out in paragraph (2).

(2) The period is –

(a) within 20 weeks of the receipt of the request; or

(b) within 4 weeks of the publication day,

whichever ends first.

(3) If by virtue of paragraph (2) a period longer than the period mentioned in Article 27(1) elapses before the request is complied with, the required information must 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) In this Article –

"marking data" means marks or other information processed by the controller –

(a) for the purpose of determining the results of an academic, professional or other examination of a candidate;

(b) for the purpose of enabling such a determination; or

(c) in consequence of such a determination;

"publication day", in relation to any examination and examination candidate, means the day on which the results of the examination are first published or (if not published) when they are first made available or communicated to the candidate concerned.

61 Health, education and social work

(1) Personal data are exempt from Article 28 if the data are processed by a court and consist of health, education or social work information that –

(a) is supplied in a report or other evidence given to the court in the course of proceedings relating to families or children; and

(b) the court directs should be withheld from the data subject on the ground that it appears to be –

(i) impracticable to disclose the report or other evidence having regard to the data subject's age and understanding, or

(ii) undesirable to disclose the report or other evidence having regard to the serious harm that might thereby be suffered by the data subject.

(2) Personal data consisting of health, education or social work information are exempt from Article 28 in any case to the extent to which the application of that Article would be likely to cause serious harm to the physical or mental health of the data subject or any other person.

(3) Where a defined person is enabled by or under any enactment or rule of law to make a request under Article 28 on behalf of a data subject and has made such a request, personal data consisting of information specified in paragraph (4) are exempt from that Article to the extent mentioned in paragraph (4).

(4) The extent of the exemption is –

(a) in the case of information contained in a health record or social work information, the extent to which the application of Article 28 would result in the disclosure of information –

(i) provided by the data subject in the expectation that it would not be disclosed to the person making the request,

(ii) obtained as a result of any examination or investigation to which the data subject consented in the expectation that the information would not be so disclosed, or

(iii) that the data subject has expressly indicated should not be so disclosed;

(b) in the case of information constituting an educational record and being information whether the data subject, when a child, is or has been the subject of or may be at risk of abuse, the extent to which the application of that Article would not be in the interests of the data subject.

(5) Paragraph (4)(a)(i) or (ii) does not apply to the extent that the data subject has expressly indicated that he or she no longer has the expectation there referred to.

(6) In relation to personal data consisting of information contained in a health record, Article 28(4) has effect as if the following word and sub-paragraph were added at the end of that paragraph –

"; or

(c) the information is contained in a health record and the other individual is a health professional who has compiled or contributed to the health record or has been involved in the care of the data subject in the health professional's capacity as a health professional.".

(7) In relation to personal data consisting of information constituting either an educational record or social work information –

(a) Article 28(4) has effect as if the following word and sub-paragraph were added at the end of that paragraph –

"; or

(c) the other individual is a relevant person.";

(b) Article 28 has effect as if the following paragraph were added after paragraph (7) –

"(8) A person is a relevant person for the purposes of paragraph (4)(c) if he or she –

(a) in the case of information constituting an educational record, is a teacher or other employee at a school, engaged by the proprietor of a school or working at a school under a contract for the provision of educational services; or

(b) in the case of social work information, is or has been employed in an administration of the States in connection with functions that are or have been exercised in relation to data consisting of an educational record or social work information that relates to him or her or that he or she supplied in his or her official capacity.".

(8) In this Article –

"abuse" in respect of a person when that person is a child –

(a) includes physical injury to, and physical neglect, emotional neglect, ill-treatment, and sexual abuse, of the person;

(b) does not include accidental injury;

"care" includes examination, investigation, diagnosis and treatment;

"defined person" means a person who –

(a) has parental responsibility for a child who is the data subject; or

(b) has been appointed by a court to manage the affairs of the data subject on account of the data subject being incapable of managing his or her own affairs;

"educational record" means a record of information that –

(a) is processed by or on behalf of the proprietor of, or a teacher at, a school;

(b) relates to a person who is or has been a pupil at the school; and

(c) originated from or was supplied by or on behalf of any of the following –

(i) a teacher or other employee at the school,

(ii) a person engaged by the proprietor of the school under a contract for the provision of educational services,

(iii) the pupil to whom the record relates,

(iv) a parent of that pupil;

"health, education or social work information" means –

(a) a health record;

(b) information constituting an educational record; or

(c) social work information;

"parent" in relation to a pupil of a school, includes a guardian and every person who has actual custody of the pupil;

"proceedings relating to families or children" includes proceedings relating to adoption, matrimonial matters or guardianship;

"social work information" means personal data processed by the States (including an administration of the States) in relation to any of the following matters –

(a) the allocation of housing or other residential accommodation;

(b) the provision of any benefit paid by the Minister for Social Security;

(c) probation;

(d) school attendance;

(e) ensuring that children receive suitable education whether by attendance at school or otherwise;

(f) guardianship;

(g) a function under the Children (Jersey) Law 2002 or any legislation relating to mental health.

62 Credit reference agency as controller

(1) If a controller is a credit reference agency, Article 28 applies in relation to that controller subject to this Article.

(2) An individual may limit a request to a controller under Article 28 to personal data relevant to the financial standing of the individual, and is taken to have so limited the request unless the request shows a contrary intention.

(3) If personal data are being processed by or on behalf of a controller who receives a request under Article 28 from an individual who is the data subject of those data, the obligation to supply information under that Article includes an obligation to give the individual a statement of any other rights arising in respect of a credit reference agency in any other enactment in such form, and to such extent, as may be prescribed by Regulations.

(4) In this Article "credit reference agency" means a person who carries on the business of providing information about the financial standing of persons.

63 Unstructured personal data held by scheduled public authorities

(1) A scheduled public authority is not obliged to comply with Article 28(1) in relation to any unstructured personal data unless the request under that Article contains a description of the data.

(2) Even if a request contains a description of data as referred to in paragraph (1), a scheduled public authority is not obliged to comply with Article 28(1) in relation to unstructured personal data if the authority estimates that the cost of complying with the request in so far as it relates to those data would exceed a prescribed limit.

(3) Paragraph (2) does not exempt the scheduled public authority from its obligation under Article 28(1) to inform an individual whether unstructured personal data of which that individual is the data subject are being processed by or on behalf of the controller unless the estimated costs of complying with that obligation alone in relation to those data would exceed a limit specified by the States in Regulations.

(4) Any estimate for the purposes of this Article must be made in accordance with Regulations under Article 16 of the Freedom of Information (Jersey) Law 2011 (whether or not any limit specified in Regulations for the purposes of this Article is the same as any amount determined in accordance with Regulations under that Article).

(5) In this Article "unstructured personal data" means any personal data consisting of recorded information held by a scheduled public authority other than data that is –

(a) processed by automated means in response to instructions given for that purpose or recorded with the intention that it be so processed; or

(b) recorded as part of a filing system or with the intention that it should form part of a filing system.

DIVISION 4 – PERMISSIONS AND EXEMPTIONS BY REGULATIONS

64 Permitted processing for law enforcement, legal proceedings and public records purposes

(1) Despite any provision of this Law the processing (including the disclosure) of personal data in either of the circumstances set out in paragraph (2) is permitted –

(a) for a purpose other than the purpose for which it was collected; and

(b) without the consent of the data subject.

(2) The circumstances are –

(a) that the processing is for the purposes set out in Article 45(1); or

(b) where disclosure is made for the purposes of paragraph 12 of Schedule 2 (legal proceedings etc.).

(3) Despite the data protection principles set out in Article 8(1)(c), (d) and (e), the processing (including disclosure) of personal data to which paragraph (4) applies is permitted.

(4) This paragraph applies to information that the controller is obliged to make available to the public by or under any enactment, whether by making it available for inspection or publishing it in another manner, and whether it is available gratuitously or on the payment of a fee.

65 Exemptions by Regulations

(1) Regulations may exempt the processing (including disclosure) of personal data from any provision of this Law.

(2) However, the power to make Regulations under paragraph (1) may be exercised only to the extent that –

(a) it is considered necessary for particular purposes, or in particular circumstances, that are in the public interest; or

(b) the public interest is not outweighed by the public interest in protecting the rights and freedoms of data subjects.

(3) The power to make Regulations under this Article includes a power –

(a) to modify or amend any enactment (including this Law) to the extent that it might otherwise prevent the processing (including disclosure) of personal data; and

(b) to put in place particular safeguards for the rights of data subjects or any other persons with respect to any processing carried out in furtherance of any new permission to process such data.

(4) The States must consult the Authority before making any Regulations under paragraph (3).

PART 8

CROSS-BORDER DATA TRANSFERS

66 General principles for cross-border data transfers

(1) A controller or a processor must not transfer personal data for processing or in circumstances where the controller or processor knew or should have known that it will be processed after the transfer to a third country or an international organization, unless that country or organization ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

(2) The level of protection referred to in paragraph (1) is adequate if –

(a) the Commission has so decided, by means of an implementing act under Article 45 of the GDPR;

(b) there are appropriate safeguards in place that meet the requirements of Article 67; or

(c) the transfer falls within the exceptions set out in Schedule 3.

(3) Regulations may –

(a) amend Schedule 3;

(b) make further provision about international transfers of data.

67 Transfer subject to appropriate safeguards

(1) In the absence of an adequacy decision under Article 45 of the GDPR, a controller or processor may transfer personal data to a third country or an international organization only if the controller or processor has provided appropriate safeguards in accordance with this Article, and on condition that enforceable data subject rights and effective legal remedies for data subjects comparable to those under this Law are available in that country or organization.

(2) The appropriate safeguards referred to in paragraph (1) may be provided for, without requiring any specific authorization from the Authority, by –

(a) a legally binding and enforceable instrument between public authorities;

(b) binding corporate rules approved by the Authority as complying with Schedule 4 or approved by another competent supervisory authority under Article 46 of the GDPR, or equivalent statutory provisions;

(c) standard data protection clauses adopted by the Authority or by a competent supervisory authority and approved by the Commission in accordance with the examination procedure referred to in Article 93(2) of the GDPR;

(d) a code or any other code approved by another competent supervisory authority under Article 40 of the GDPR or equivalent statutory provisions, together with binding and enforceable commitments of the controller, processor or recipient in the third country or international organization to apply the appropriate safeguards, including as regards data subjects' rights; or

(e) the controller, processor or recipient in the third country having been certified in accordance with a certification mechanism either provided for in

Regulations under Article 80 or approved by another competent supervisory authority under Article 42 of the GDPR.

(3) Subject to specific authorization from the Authority and where there is a mechanism for data subjects to enforce their data subject rights and obtain effective legal remedies against the controller, processor or recipient of that personal data in the jurisdiction concerned, the appropriate safeguards referred to in paragraph (1) may also be provided for by –

(a) contractual clauses between the controller or processor and the controller, processor or the recipient of the personal data in the third country or international organization; or

(b) where both the transferor and the controller, processor or recipient of the personal data in the third country or international organization concerned are public authorities, provisions in administrative arrangements between those public authorities that include enforceable and effective data subject rights.

(4) In determining whether to authorize a transfer under this Article, the Authority must have regard to factors that include, but are not limited to, any opinions or decisions of the European Data Protection Board under Article 64, 65 or 66 of the GDPR that appear to the Authority to be relevant.

PART 9

REMEDIES AND ENFORCEMENT

68 Proceedings against controllers

(1) A data subject who considers that the transparency and subject rights provisions have been or will be contravened, may bring proceedings against the controller responsible for the contravention in the Royal Court under this Article.

(2) Where the Royal Court is satisfied that those rights have been or will be contravened the court may make such order as it considers appropriate, including –

(a) an award of compensation for loss, damage or distress in respect of the contravention;

(b) an injunction (including an interim injunction) to restrain any actual or anticipated contravention;

(c) a declaration that the controller is responsible for the contravention or that a particular act, omission or course of conduct on the part of the controller would result in a contravention; and

(d) requiring the controller to give effect to the transparency and subject rights provisions.

(3) Nothing in this Article limits any other right or remedy that a data subject may have against a controller or processor.

(4) Where –

(a) a person has made a right of access request under Article 28; and

(b) the Royal Court is satisfied, on the application of a third party that compliance with that request is likely to cause the third party to suffer serious harm to his or her physical or mental health or condition,

the court may order the controller not to comply with the request.

69 Compensation

(1) Any person who suffers loss, damage or distress by reason of any contravention of this Law by a controller or processor is entitled to compensation.

(2) Controllers or processors against whom any claim for compensation is made under this Article or Article 30 of the Authority Law who prove that they are not responsible for the event giving rise to the loss, damage or distress are exempt from any liability to pay that compensation.

(3) A processor is exempt from liability for damages under any action for loss, damage or distress unless the processor –

(a) has contravened any obligation imposed on processors by this Law; or

(b) has acted outside or contrary to lawful instructions given by the controller.

(4) Where one or more controllers or processors are involved in the same processing that caused the loss, damage or distress, each such controller and processor is jointly and severally liable for the loss, damage or distress.

(5) A controller or processor is entitled to reimbursement, in respect of compensation paid out by that controller or processor from each of the other controllers or processors involved in the processing that gave rise to the liability for compensation, of that part of the compensation corresponding to that other controller or processor's responsibility for the loss, damage or distress.

70 Representation of data subjects

(1) Any person who has standing to make a complaint or commence proceedings under this Law or the Authority Law may authorize a data protection organization on that person's behalf to –

(a) make a complaint against the Authority under Article 19 of the Authority Law; or

(b) bring proceedings (including any appeal proceedings) in respect of a contravention of this Law by a controller or processor, or for compensation,

and represent the person in any proceedings arising from that complaint or those proceedings and to exercise any right of the data subject on his or her behalf.

(2) In this Article "data protection organization" means any non-profit association (as described in paragraph 10(a) of Schedule 2) properly constituted in accordance with relevant law that has objectives in the public interest and is active in the field of the protection of data subject rights.

71 Unlawful obtaining etc. of personal data

(1) A person must not knowingly or recklessly, without the consent of the relevant controller –

(a) obtain or disclose personal data or the information contained in personal data; or

(b) procure the disclosure to another person of the information contained in personal data.

(2) A person who contravenes paragraph (1) is guilty of an offence.

(3) A person does not contravene paragraph (1) if the person shows that –

(a) the obtaining, disclosing or procuring was necessary for the purpose of preventing or detecting crime, or was required or authorized by or under any enactment, by any rule of law or by the order of a court;

(b) the person acted in the reasonable belief that the person had in law the right to obtain or disclose the data or information or, as the case may be, to procure the disclosure of the information to the other person;

(c) the person acted in the reasonable belief that the person would have had the consent of the controller if the controller had known of the obtaining, disclosing or procuring and the circumstances of it; or

(d) in the circumstances of the case, the obtaining, disclosing or procuring was justified as being in the public interest.

(4) A person who sells personal data is guilty of an offence if the person has obtained the data in contravention of paragraph (1).

(5) A person who offers to sell personal data is guilty of an offence if –

(a) the person has obtained the data in contravention of paragraph (1); or

(b) the person subsequently obtains the data in contravention of that paragraph.

(6) For the purposes of paragraph (5), an advertisement indicating that personal data are or may be for sale is an offer to sell the data.

(7) For the purposes of paragraphs (4) to (6), "personal data" includes information extracted from personal data.

72 Requirement to produce certain records illegal

(1) A person must not, in connection with –

(a) the recruitment of another person as an employee;

(b) the continued employment of another person; or

(c) any contract for the provision of services to the person by another person,

require that other person or a third party to supply or produce a relevant record to the first person.

(2) A person concerned with the provision (for payment or not) of goods, facilities or services to the public (or a section of the public) must not, as a condition of providing or offering to provide any goods, facilities or services to another person, require that other person or a third party to supply or produce a relevant record to the first person.

(3) A person does not contravene paragraph (1) or (2) if the person shows that –

(a) the imposition of the requirement was required or authorized by or under any enactment, by any rule of law or by the order of a court; or

(b) in the particular circumstances the imposition of the requirement was justified as being in the public interest.

(4) A person who contravenes paragraph (1) or (2) is guilty of an offence and liable to a fine of level 3 on the standard scale.

(5) For the purposes of this Article, a record that states that a controller is not processing any personal data relating to a particular matter is taken to be a record containing information relating to that matter.

(6) In this Article (including the Table to this Article) –

"caution" means a caution given to any person in Jersey in respect of an offence that, at the time when the caution is given, is admitted;

"conviction" has the same meaning as in the Rehabilitation of Offenders (Jersey) Law 2001;

"employee" means an individual who works under a contract of employment, or holds any office, whether or not entitled to remuneration and "employment" shall be construed accordingly;

"relevant record" means any record that –

(a) has been or is to be obtained by a data subject from a controller specified in the first column of the Table to this Article in the exercise of the rights conferred by the transparency and subject rights provisions; and

(b) contains information relating to a matter specified in relation to the controller in the second column of that Table,

and includes a copy of such a record or a part of such a record.

(7) A record is not a relevant record to the extent that it relates, or is to relate, only to personal data falling within paragraph (d) of the definition "data" in Article 1(1).

(8) Regulations may amend the Table to this Article and the definitions of "caution" and "conviction" in paragraph (6).

TABLE[10]

Controller	*Subject-matter*
1. Chief Officer of the States of Jersey Police Force	Convictions, cautions
2. A member of the honorary police of any of the 12 Parishes of Jersey	Cautions
3. Minister for Justice and Home Affairs	Convictions, cautions, functions of that Minister under the Prison (Jersey) Law 1957
4. Minister for Social Security	Convictions, cautions, functions of that Minister under any enactment of Jersey

73 False information

(1) A person who knowingly or recklessly provides the Authority, or any other person entitled to information under this Law, the Authority Law or Regulations made under those Laws, with information that is false or misleading in a material particular, is guilty of an offence.

(2) However, no offence is committed under paragraph (1) unless the information is provided –

(a) in connection with an application under this Law or the Authority Law;

(b) in purported compliance with a requirement imposed under this Law, the Authority Law or under Regulations made under those Laws; or

(c) otherwise than as mentioned in paragraph (1) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that the information will be used by the Authority for the

purpose of carrying out the Authority's functions under this Law or the Authority Law.

(3) A person guilty of an offence under this Article is liable to imprisonment for a term of 2 years and to a fine.

74 Obstruction

(1) A person must not do any of the following in relation to any person to whom this paragraph applies –

(a) intentionally obstruct or impede the person;

(b) interfere with, or cause or knowingly permit to be interfered with, anything done by the person;

(c) fail to give to the person any assistance or information that is reasonably required;

(d) fail to produce a record when required to do so by the person;

(e) fail to co-operate with the exercise of any power under Schedule 1 to the Authority Law.

(2) Paragraph (1) applies to the Authority and any other person acting in the execution or enforcement of this Law or the Authority Law.

(3) A person who contravenes paragraph (1) is guilty of an offence and in the case of an offence under paragraph (1)(a) or (b), is liable to imprisonment for a term of 2 years and to a fine.

75 General provisions relating to offences

(1) A person guilty of an offence under this Law is liable to a fine except where this Law otherwise provides.

(2) Where an offence under this Law, or under Regulations made under this Law, committed by a limited liability partnership or body corporate or unincorporated body is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

(a) a person who is a partner of the limited liability partnership, or director, manager, secretary or other similar officer of the body corporate;

(b) in the case of any other partnership, any partner;

(c) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body; or

(d) any person purporting to act in any capacity described in sub-paragraph (a), (b) or (c),

the person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

(3) If the affairs of a body corporate are managed by its members, paragraph (2) applies in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

(4) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence must, without limiting paragraph (2), be brought in the name of the body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction for an offence under this Law must be paid from the funds of the body.

(6) A person who aids, abets, counsels or procures the commission of an offence under this Law is also guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.

76 Proceedings concerning unincorporated bodies

Subject to Article 75, where a contravention of this Law is alleged to have been committed by an unincorporated body, any complaint, investigation, action, order or notice, or other proceedings, for or otherwise in relation to the contravention must be brought, issued or (as the case may be) served in the name of the body and not in the name of any of its members.

77 Rules of Court

(1) The power to make Rules of Court under Article 13 of the Royal Court (Jersey) Law 1948 includes the power to make Rules regulating the practice and procedure on any matter relating to the Royal Court under this Law.

(2) The Rules may, in particular, make provision enabling –

(a) directions to be given to withhold material or restrict disclosure of any information relevant to proceedings under this Law from any party (including any representative of any party) to the proceedings; and

(b) the court to conduct such proceedings in the absence of any person, including a party to the proceedings (or any representative of a party to the proceedings).

(3) In making the Rules, regard must be had to –

(a) the need to secure that the decisions that are the subject of such proceedings are properly reviewed; and

(b) the need to secure that disclosures of information are not made where they would be contrary to the public interest.

PART 10

MISCELLANEOUS

78 Codes of conduct

(1) The Authority may approve a code of conduct or an amendment or extension of a code of conduct, prepared by any person representing a category of controllers or processors for the purposes of –

(a) encouraging or facilitating compliance with this Law; or

(b) allowing controllers or processors that are not otherwise subject to this Law to demonstrate that they have appropriate safeguards for the protection of personal data, for the purposes of personal data transfers to third countries or international organizations under Article 67.

(2) A code may include any provisions relating to the following –

(a) fair and transparent processing;

(b) the legitimate interests pursued by controllers in specific contexts;

(c) the collection of personal data;

(d) the pseudonymization of personal data;

(e) the information provided to the public and to data subjects;

(f) the exercise of the rights of data subjects;

(g) the information provided to, and the protection of, children, and the manner in which the consent of the persons with parental responsibility for children is to be obtained;

(h) any steps or measures required to be established, taken or carried out by controllers or processors under this Law;

(i) the notification of personal data breaches to supervisory authorities and the communication of such personal data breaches to data subjects;

(j) the transfer of personal data to third countries or international organizations;

(k) out-of-court proceedings and other dispute resolution procedures for resolving disputes between controllers and data subjects with regard to processing, without affecting the rights of data subjects under this Law; or

(l) any other matter relating to compliance with this Law or appropriate safeguards for the protection of personal data.

(3) An approval under paragraph (1) is effected by the Authority's registering and publishing the code in any manner that the Authority considers fit.

(4) The Authority must not approve a code unless –

(a) the code provides for a person accredited by the Authority (or another competent supervisory authority) to monitor compliance with the code by controllers and processors who purport to apply or implement the code;

(b) the code requires any controller or processor established in a third country that purports to apply or implement the code to enter into legally binding and enforceable commitments to apply or implement provisions of the code;

(c) where the code relates to processing operations in a Member State, the Commission has, by way of an implementing act under the GDPR, stated that the code has general validity within the EU; and

(d) The Authority considers that –

(i) the contents of the code comply with this Law, and

(ii) the code provides appropriate safeguards for the protection of personal data.

(5) In determining whether or not to approve a code, the Authority must take into account –

(a) the particular circumstances of the various sectors in which processing or personal data takes place and to which the code relates; and

(b) the needs of different sizes of enterprises or establishments that are controllers or processors to which the code applies.

79 Accreditation and duties of accredited person

(1) For the purposes of Article 78(4)(a), the Authority may accredit any person (the "accredited person") to monitor compliance with a code if the Authority considers that the person has –

(a) adequate expertise and independence in relation to the subject-matter of the code;

(b) established procedures that allow it to assess the eligibility of controllers and processors concerned to apply the code, to monitor their compliance with its provisions and to review periodically the implementation of the code;

(c) established procedures and structures to handle complaints about infringements of the code or the manner in which the code has been, or is being, implemented by a controller or processor, and to make those procedures and structures transparent to data subjects and the public; and

(d) no conflict of interests in connection with the discharge or performance of its other tasks and duties.

(2) In cases of infringement of the code by any controller or processor that purports to apply or implement the code, the accredited person must –

(a) take appropriate action including suspension or exclusion from the code where appropriate; and

(b) notify the Authority of any action taken by the person and the reasons for the action.

(3) The Authority may suspend or revoke an accreditation under paragraph (1) if –

(a) the conditions for accreditation are not, or are no longer, met; or

(b) the accredited person contravenes paragraph (2).

80 Regulations establishing certification mechanism

(1) Regulations may provide for the establishment of mechanisms, seals or marks to certify or signify –

(a) that particular processing operations by controllers or processors comply with this Law; or

(b) the existence of appropriate safeguards for the protection of personal data provided by controllers or processors established in a third country for the purposes of personal data transfers to third countries or international organizations as provided for by Article 67.[11]

(2) Regulations made under paragraph (1) may amend the Authority Law so as to confer or impose functions on the Authority in consequence of the Regulations.

81 Application to public sector

(1) This Law binds the Crown.

(2) The application of this Law extends to the States and any Minister, department, or administration, of the States, and each such department, or administration is taken to be a separate person.

(3) For the purposes of this Law, if an order, requirement, direction, notice or other instrument is imposed or served on the head of a department of the States or the head of an administration of the States –

(a) it is taken to have been imposed or served on the department or administration of which that person is the head; and

(b) if it requires compliance, the head must ensure that it is complied with.

82 Service of notices etc.

(1) A notice required by this Law to be given to the Authority is not regarded as given until it is in fact received by the Authority.

(2) A notice or other document required or authorized under this Law or under Regulations made under this Law to be given to the Authority may be given by electronic or any other means by which the Authority may obtain or recreate the notice or document in a form legible to the naked eye.

(3) Any notice, direction or other document required or authorized by or under this Law to be given to or served on any person other than the Authority may be given or served –

(a) by delivering it to the person;

(b) by leaving it at the person's proper address;

(c) by sending it by post to the person at that address; or

(d) by sending it to the person at that address by electronic or any other means by which the notice, direction or document may be obtained or recreated in a form legible to the naked eye.

(4) Without limiting the generality of paragraph (3), any such notice, direction or other document may be given to or served on a partnership, company incorporated outside Jersey or an unincorporated association by being given to or served –

(a) in any case, on a person who is, or purports (under whatever description) to act as, its secretary, clerk or other similar officer;

(b) in the case of a partnership, on the person having the control or management of the partnership business;

(c) in the case of a partnership or company incorporated outside Jersey, on a person who is a principal person in relation to it (within the meaning of the Financial Services (Jersey) Law 1998); or

(d) by being delivered to the registered or administrative office of a person referred to in sub-paragraph (a), (b) or (c) if the person is a body corporate.

(5) For the purposes of this Article and of Article 7 of the Interpretation (Jersey) Law 1954, the proper address of any person to or on whom a notice, direction or other document is to be given or served by post is the person's last known address, except that –

(a) in the case of a company (or person referred to in paragraph (4) in relation to a company incorporated outside Jersey) it is the address of the registered or principal office of the company in Jersey; and

(b) in the case of a partnership (or person referred to in paragraph (4) in relation to a partnership) it is the address of the principal office of the partnership in Jersey.

(6) If the person to or on whom any notice, direction or other document referred to in paragraph (3) is to be given or served has notified the Authority of an address within Jersey, other than the person's proper address within the meaning of paragraph (5), as the one at which the person or someone on the person's behalf will accept documents of the same description as that notice, direction or other document, that address is also treated for the purposes of this Article and Article 7 of the Interpretation (Jersey) Law 1954 as the person's proper address.

(7) If the name or the address of any owner, lessee or occupier of premises on whom any notice, direction or other document referred to in paragraph (3) is to be served cannot after reasonable enquiry be ascertained it may be served by –

(a) addressing it to the person on whom it is to be served by the description of "owner", "lessee" or "occupier" of the premises;

(b) specifying the premises on it; and

(c) delivering it to some responsible person resident or appearing to be resident on the premises or, if there is no person to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

83 Regulations – disclosure of information to improve public service delivery

(1) Where they consider that to do so would improve the delivery of public services, the States may by Regulations prescribe the following matters –

(a) the prescribed persons, whether individually or by description, who may disclose to any other prescribed person information held in connection with any function;

(b) the purposes for which any prescribed person, or particular prescribed person may disclose data either to any other prescribed person or to particular prescribed persons;

(c) the safeguards and restrictions on the disclosure of the data by any or all prescribed persons and on the use of the information by any prescribed person;

(d) the circumstances in which information may be disclosed by a prescribed person to a person who is not a prescribed person and the safeguards and restrictions that may be imposed in respect of such disclosures, or further disclosures, as may be necessary or expedient to protect the rights of any person, whether natural or legal.

(2) Before Regulations under paragraph (1) that permit the processing of personal data as part of the information disclosed may be made, the proposer of the Regulations –

(a) must prepare a data protection impact assessment under Article 16; and

(b) where the processing would pose a high risk to rights and freedoms of data subjects, consult the Authority in accordance with Article 17(2).

(3) Regulations under this Article may amend or modify any enactment to the extent that it is necessary or expedient for the purposes of, or will enable the disclosure of, information intended to improve public service delivery other than –

(a) this Law or the Authority Law;

(b) the Police Procedures and Criminal Evidence (Jersey) Law 2003; or

(c) the Regulation of Investigatory Powers (Jersey) Law 2005.

(4) A person who discloses or uses any information in contravention of Regulations under this Article is guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

(5) For the purposes of paragraph (1) –

"function", in the case of a person who is a prescribed person only because the person exercises the function of providing services to a public authority, means only that function;

"information" includes personal data and any other information, whether or not relating to identifiable corporate bodies;

"prescribed persons" means public authorities or States' employees.

84 Regulations – constitution of Information Board

(1) Regulations may provide that a public authority, States' employee or any other person providing services to a public authority may individually or collectively constitute an Information Board for the purposes of –

(a) co-ordinating the disclosure of data by prescribed persons to improve the delivery of public services; and

(b) ensuring that the requirements of this Law and any Regulations made under it in relation to the disclosure of information are met.

(2) The Regulations may –

(a) provide for the incorporation of the Information Board; and

(b) confer such rights, obligations and powers on the Board or on any person responsible for operating the Board as may be required to improve the delivery of public services and ensure the requirements of this Law and any Regulations made under it are met.

85 Regulations and Orders – general

(1) The States may by Regulations and the Minister may by Order make provision for the purpose of carrying this Law into effect and including for or with respect to any matter that may be prescribed under this Law by Regulations or Orders as the case may be.

(2) Without limiting the generality of paragraph (1) the States may by Regulations make any provision they think fit for any or all of the following purposes –

(a) requiring or authorizing a social security number or any other identification number issued by any public authority to be processed in a specified manner;

(b) requiring or authorizing the personal data of employees to be processed in a specified manner in the context of employment, including for the following purposes –

(i) recruitment,

(ii) the performance of a contract of employment, including discharge of obligations laid down by law,

(iii) management, planning and organization of work,

(iv) equality and diversity in the workplace,

(v) health and safety at work,

(vi) protection of the property of employers or customers,

(vii) the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, or

(viii) the termination of the employment relationship;

(c) prohibiting a social security number or any other identification number issued by any public authority to be processed in a specified manner; or

(d) prohibiting the personal data of employees from being processed in a specified manner in the context of employment, including for any of the purposes specified in sub-paragraph (b).

(3) Regulations made under paragraph (2) may include –

(a) safeguards for the rights and freedoms of data subjects;

(b) provisions relating to the transparency of processing;

(c) provisions relating to the transfer of personal data within a group of undertakings or within a group of enterprises engaged in a joint economic activity; or

(d) provisions relating to the monitoring of the application of the Regulations.

(4) Regulations and Orders made under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the States to be necessary or expedient for the purposes of the Regulations.

(5) The power in paragraph (2), and in paragraph (4) in respect of Regulations, includes power to –

(a) repeal, revoke or amend any provision of an enactment (including this Law); and

(b) make any other consequential amendments to any other enactment as the States think fit.

(6) Regulations made under this Law may create an offence punishable by a fine of up to level 3 on the standard scale.

86 Savings and transitional arrangements

(1) Schedule 5 has effect.

(2) Regulations may make provisions of a saving or transitional nature consequent on the enactment of this Law or the Authority Law.

(3) Any provision of Regulations made under this Article may, if the Regulations so provide, come into force on the day on which Schedule 5 comes into force or on a later day.

87 Citation

This Law may be cited as the Data Protection (Jersey) Law 2018.

SCHEDULE 1

(Article 4(5))

MODIFICATIONS OF LAW IN CASES OF PROCESSING BY COMPETENT AUTHORITIES

1 List of competent authorities

The following are the competent authorities for the purposes of Article 4(7)(a) –

Andium Homes

Department of the Environment: Environmental Health, Marine Resources, Planning and Building Control, Sea Fisheries, States Vet, Water Resources.

Health and Social Services: Social Services Department

Department for Infrastructure: Driver and Vehicle Standards, Parking Control

Social Security Department

Health & Safety Inspectorate

Income Tax Department

Jersey Customs & Immigration Service

Jersey Financial Services Commission

Jersey Fire and Rescue Service

Jersey Gambling Commission

Jersey Police Complaints Authority

Jersey Probation Service

Judicial Greffe

The Law Officers' Department

Any Parish

Ports of Jersey

States of Jersey Police

Trading Standards

Viscount's Department.

2 Application and power to prescribe time limits

(1) This Schedule applies to the processing of personal data by a controller that is a competent authority for a law enforcement purpose.

(2) This Law applies to that processing subject to the modifications set out in this Schedule.

(3) The Minister may prescribe specific time limits for the erasure or periodic review of the storage by competent authorities of data that are processed for law enforcement purposes.

3 Article 8 modified

In Article 8 –

(a) for paragraph (1)(a) there is substituted the following sub-paragraph –

"(a) processed lawfully and fairly ('lawfulness and fairness');";

(b) after paragraph (2) there is added the following paragraph –

"(3) Contravention of any Order prescribing specific time limits for the erasure or periodic review of the storage by competent authorities of data that are processed for law enforcement purposes is taken to be a breach of the data protection principle relating to storage limitation.".

4 Article 9 substituted

For Article 9 there is substituted the following Article –

"9 Lawful processing

(1) The processing of personal data is lawful only if and to the extent that it is permitted by law and either –

(a) the data subject has given consent to the processing for that purpose; or

(b) the processing is necessary for the performance of a task carried out by a controller for a law enforcement purpose.

(2) The processing of special category data (other than data relating to a natural person's criminal record or an alleged criminal activity) is lawful only if and to the extent that it is permitted by law and –

(a) is strictly necessary, subject to appropriate safeguards for the rights and freedoms of the data subject;

(b) serves to protect the vital interests of the data subject or another individual; or

(c) the processing relates to data that are manifestly made public by the data subject.

(3) For the purposes of paragraph (2)(a) processing is strictly necessary where it is necessary –

(a) for the purposes of the administration of justice;

(b) for the performance of a function conferred on a person by any enactment;

(c) for the establishment, exercise or defence of a legal claim or whenever a court is acting in its judicial capacity;

(d) for the purposes of preventing any kind of fraud; or

(e) for any of the purposes set out in paragraph 17 of Schedule 2 (archiving and research).

(4) In the case of any of the purposes mentioned in paragraph (3)(e) processing is not permitted if it is carried out –

(a) for the purposes of, or in connection with, measures or decisions with respect to a particular data subject; or

(b) it is likely to cause substantial damage or substantial distress to an individual.".

5 Article 10 modified

In Article 10(3) the words "and transparently" are omitted.

6 Article 12 substituted

For Article 12 there is substituted the following Article –

"12 Information to be provided to data subject

(1) The controller must make available to data subjects the following information (whether by making the information generally available to the public or in any other way) –

(a) the identity and the contact details of the controller;

(b) where applicable, the contact details of the data protection officer;

(c) the purposes for which the controller processes personal data;

(d) the existence of the right to lodge a complaint with the Authority and the contact details of the Authority; and

(e) the existence of the rights of data subjects to request from the controller –

(i) access to personal data,

(ii) rectification of personal data, and

(iii) erasure of personal data or the restriction of its processing.

(2) Except in relation to the processing of relevant personal data in the course of a criminal investigation or criminal proceedings, including proceedings for the purpose of enforcing a criminal penalty, the controller must also, in specific cases for the purpose of enabling the exercise of a data subject's rights under this Part, give to the data subject the following further information to enable the exercise of his or her rights –

(a) the legal basis for the processing;

(b) the period for which the personal data will be stored, or where that is not possible, the criteria used to determine that period;

(c) where applicable, the categories of recipients of the personal data, including third countries or international organizations;

(d) any further information that is necessary, having regard to the specific circumstances in which the data are or are to be processed, to enable processing in respect of the data subject to be fair.

(3) The information required to be provided under this Article must be provided in an intelligible form using clear language.

(4) The controller may delay, restrict or omit giving any of the information required by paragraph (2) to the extent that, and for as long as, it considers it necessary and proportionate to do so having regard to the fundamental rights and legitimate interests of the data subject concerned, in order to –

(a) avoid obstructing official or legal inquiries, investigations or procedures;

(b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;

(c) protect public security;

(d) protect national security; or

(e) protect the rights and freedoms or others.

(5) In paragraph (2), 'relevant personal data' means personal data contained in a judicial decision or in other documents relating to the investigation or proceedings which are created by or on behalf of a court or other judicial authority.".

7 Article 13 substituted

For Article 13 there is substituted the following Article –

"13 Purposes of processing

(1) Personal data collected for a law enforcement purpose may be processed for any other law enforcement purpose (whether by the controller that collected the data or by another controller) provided that –

(a) the controller is authorized by law to process the data for the other purpose; and

(b) the processing is necessary and proportionate to that other purpose.

(2) Personal data collected for any of the law enforcement purposes may not be processed for a purpose that is not a law enforcement purpose unless the processing is authorized by law.

(3) The controller must process personal data in a way that makes appropriate distinctions between data relating to different categories of data subjects, including persons suspected of committing, or convicted of, an offence and victims and witnesses, whose data may be processed for different purposes.".

8 Article 15 modified

After Article 15(5) there are added the following paragraphs –

"(6) The controller, as far as practicable, must –

(a) verify the quality of personal data before they are transmitted or made available;

(b) when transmitting the data, add such information as is necessary to enable the receiving authority to assess the degree of accuracy, completeness and reliability of that data.

(7) Where incorrect personal data have been transmitted or personal data have been transmitted unlawfully the controller must notify the recipient and must rectify or erase the personal data or restrict processing without the need for any request from the data subject under Article 31 or 32.".

9 Article 17 modified

At the end of Article 17(1) there are added the words "and the processing in question consists of a new collection of personal data".

10 Article 20 modified

After Article 20(8) there is added the following paragraph –

"(9) The communication to the data subject referred to in paragraph (6) may be delayed, restricted or omitted to the extent that, and for as long as, the restriction (whether whole or partial) is necessary and proportionate having regard to the fundamental rights and legitimate interests of the data subject concerned, in order to –

(a) avoid obstructing official or legal inquiries, investigations or procedures;

(b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the enforcement of criminal penalties;

(c) protect public security;

(d) protect national security; or

(e) protect the rights and freedoms or others.".

11 Article 21 modified

After Article 21(3) there are inserted the following paragraphs –

"(3A) In respect of automated processing, the controller, having evaluated the risks, must implement measures designed to –

(a) deny unauthorized persons access to processing equipment used for processing ('equipment access control');

(b) prevent the unauthorized reading, copying, modification or removal of data media ('data media control');

(c) prevent the unauthorized input of personal data and the unauthorized inspection, modification or deletion of stored personal data ('storage control');

(d) prevent the use of automated processing systems by unauthorized persons using data communication equipment ('user control');

(e) ensure that persons authorized to use an automated processing system have access only to the personal data covered by their access authorization ('data access control');

(f) ensure that it is possible to verify and establish the bodies to which personal data have been or may be transmitted or made available using data communication equipment ('communication control');

(g) ensure that it is subsequently possible to verify and establish which personal data have been input into automated processing systems and when and by whom the personal data were input ('input control');

(h) prevent the unauthorized reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media ('transport control');

(i) ensure that installed systems may, in the case of interruption, be restored ('recovery');

(j) ensure that the functions of the system perform, that the appearance of faults in the functions is reported ('reliability') and that stored personal data cannot be corrupted by means of a malfunctioning of the system ('integrity').

(3B) The controller must keep logs for processing operations in automated processing systems consisting of collection, alteration, consultation, disclosure including transfers, combination and erasure of personal data, and in the case of logs of consultation and disclosure, must enable –

(a) the establishment of the justification, date and time of such operations; and

(b) as far as possible, the identification of the person who consulted or disclosed personal data, and the identity of the recipients of such personal data.

(3C) The logs may be used solely for verification of the lawfulness of processing, self-monitoring, ensuring the integrity and security of the personal data, and for criminal proceedings.

(3D) The controller and the processor must make the logs available to the Authority on request.".

12 Article 27 modified

In Article 27 –

(a) the words in paragraph (1) after the word "undue delay" are omitted;

(b) paragraph (2) is omitted;

(c) in paragraph (4) the words "and at the latest within 4 weeks of receipt of the request" are omitted.

13 Article 28 modified

In Article 28 –

(a) paragraph (1)(h) and (3)(b) are omitted;

(b) after paragraph (7) there are added the following paragraphs –

"(8) The data subject's right of access is restricted to the extent that, and for as long as, the restriction (whether whole or partial) is necessary and proportionate having regard to the fundamental rights and legitimate interests of the data subject concerned, in order to –

(a) avoid obstructing official or legal inquiries, investigations or procedures;

(b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;

(c) protect public security;

(d) protect national security; or

(e) protect the rights and freedoms of others.

(9) The controller must assess, according to individual circumstances, the extent to which a data subject's rights should be restricted under paragraph (8) and any such restriction must be notified in writing to the data subject with the factual or legal reasons for the restriction.".

14 Article 31 modified

After Article 31(4) there are added the following paragraphs –

"(5) The controller must inform the data subject in writing of any refusal of rectification of personal data and the reasons for the refusal unless it considers it necessary and proportionate not to do so having regard to the fundamental rights and legitimate interests of the data subject concerned, in order to –

(a) avoid obstructing official or legal inquiries, investigations or procedures;

(b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;

(c) protect public security;

(d) protect national security; or

(e) protect the rights and freedoms of others.

(6) The controller must inform the data subject of his or her right to lodge a complaint with the Authority or to seek a judicial remedy.

(7) The controller must communicate the rectification of inaccurate personal data to the controller from which the inaccurate personal data originate.

(8) Where personal data has been rectified under this Article the controller must notify the recipients of the data and those recipients must rectify the personal data under their responsibility.

(9) Where the controller would be required to rectify personal data under this Article but the personal data must be maintained for the purposes of evidence, the controller must (instead of rectifying the personal data) restrict its processing.".

15 Article 32 modified

In Article 32 –

(a) for paragraph (1) there is substituted the following paragraph –

"(1) Where so required by the data subject the controller must erase personal data without undue delay where the processing breaches any of the data protection principles.";

(b) after paragraph (3) there are inserted the following paragraphs –

"(3A) The controller must inform the data subject in writing of any refusal of erasure of personal data and the reasons for the refusal unless it considers it necessary and proportionate not to do so having regard to the fundamental rights and legitimate interests of the data subject concerned, in order to –

(a) avoid obstructing official or legal inquiries, investigations or procedures;

(b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;

(c) protect public security;

(d) protect national security; or

(e) protect the rights and freedoms of others.

(3B) The controller must inform the data subject of his or her right to lodge a complaint with the Authority or to seek a judicial remedy.

(3C) Where personal data has been erased under this Article the controller must notify the recipients of the data and those recipients must erase the personal data under their responsibility.

(3D) Where the controller would be required to erase personal data under this Article but the personal data must be maintained for the purposes of evidence, the controller must (instead of erasing the personal data) restrict its processing.".

16 Article 33 modified

After Article 33(3) there are added the following paragraphs –

"(4) The controller must restrict processing instead of erasing personal data where –

(a) the accuracy of the personal data is contested by the data subject and the extent of the data's accuracy cannot be ascertained;

(b) the personal data must be maintained for the purposes of evidence.

(5) Where paragraph (4)(a) applies the controller must inform the data subject before lifting the restriction on processing.

(6) The controller must inform the data subject in writing of any refusal of restriction of processing of personal data and the reasons for the refusal unless it considers it necessary and proportionate not to do so having regard to the fundamental rights and legitimate interests of the data subject concerned, in order to –

(a) avoid obstructing official or legal inquiries, investigations or procedures;

(b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;

(c) protect public security;

(d) protect national security; or

(e) protect the rights and freedoms of others.

(7) The controller must inform the data subject of his or her right to lodge a complaint with the Authority or to seek a judicial remedy.

(8) Where the processing of personal data has been restricted under this Article the controller must notify the recipients of the data and those recipients must restrict processing of the personal data under their responsibility.".

17 Articles 34 to 37 omitted

Articles 34 to 37 are omitted.

18 Article 38 modified

For Article 38(1) to (4) there are substituted the following paragraphs –

"(1) A decision based on automated processing that produces an adverse legal effect concerning the data subject or significantly affects the data subject, is prohibited unless –

(a) the decision is authorized by the relevant law to which the controller is subject; and

(b) that law provides adequate safeguards for the rights and freedoms of the data subject, in particular the right to obtain human intervention on the part of the controller.

(2) A decision mentioned in paragraph (1) must not be based on special category data as mentioned in Article 10(2) unless suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place.".

19 Part 8 substituted

For Part 8 there is substituted the following Part –

"PART 8

CROSS-BORDER DATA TRANSFERS

66 General principles for cross-border data transfers

(1) A controller must not transfer personal data to a third country or to an international organization unless –

(a) the transfer is necessary for any of the law enforcement purposes;

(b) the conditions set out in paragraph (2) are met; and

(c) in a case where the personal data was originally transmitted or otherwise made available to the controller or another competent authority by a Member State, that Member State, or any person based in that Member State that is a competent authority for the purposes of the Law Enforcement Directive, has authorized the transfer in accordance with the law of the Member State.

(2) The conditions are –

(a) that the transfer is based on –

(i) an adequacy decision in accordance with Article 67,

(ii) there being appropriate safeguards as set out in Article 67A, or

(iii) the special circumstances set out in Article 67B; and

(b) the intended recipient is –

(i) a relevant authority in a third country or an international organization that is a relevant international organization, or

(ii) any other person and the additional conditions in Article 67C are met.

(3) Authorization is not required as mentioned in paragraph (1)(c) if –

(a) the transfer is necessary for the prevention of an immediate and serious threat either to the public security of Jersey or a Member State or a third country or to the essential interests of a Member State; and

(b) the authorization cannot be obtained in good time.

(4) Where a transfer is made without the authorization mentioned in paragraph (1)(c), the authority in the Member State which would have been responsible for deciding whether to authorize the transfer must be informed without delay.

(5) In this Article –

'relevant authority', in relation to a third country, means any person based in a third country that has (in that country) functions comparable to those of a competent authority;

'relevant international organization' means an international organization that carries out functions for any of the law enforcement purposes.

67 Transfers on the basis of an adequacy decision

A transfer of personal data to a third country or an international organization is based on an adequacy decision where –

(a) the European Commission has decided, in accordance with Article 36 of the Law Enforcement Directive, that the third country or a territory or one or more specified sectors within that third country, or (as the case may be) the international organization, ensures an adequate level of protection of personal data; and

(b) that decision has not been repealed or suspended, or amended in a way that demonstrates that the Commission no longer considers there to be an adequate level of protection of personal data.

67A Transfers on the basis of appropriate safeguards

(1) A transfer of personal data to a third country or an international organization is based on there being appropriate safeguards where –

(a) a legal instrument containing appropriate safeguards for the protection of personal data binds the intended recipient of the data; or

(b) the controller, having assessed all the circumstances surrounding transfers of that type of personal data to the third country or international organization, concludes that appropriate safeguards exist to protect the data.

(2) The controller must inform the Authority about the categories of data transfers that take place in reliance on paragraph (1)(b).

(3) Where a transfer of data takes place in reliance on paragraph (1) –

(a) the transfer must be documented;

(b) the documentation must be provided to the Authority on request;

(c) the documentation must include, in particular –

(i) the date and time of the transfer,

(ii) the name of and any other pertinent information about the recipient,

(iii) the justification for the transfer, and

(iv) a description of the personal data transferred.

67B Transfers on the basis of special circumstances

(1) A transfer of personal data to a third country or international organization is based on special circumstances where the transfer is necessary –

(a) to protect the vital interests of the data subject or another person;

(b) to safeguard the legitimate interests of the data subject;

(c) for the prevention of an immediate and serious threat to the public security of Jersey, a Member State or a third country;

(d) in individual cases for any of the law enforcement purposes; or

(e) in individual cases for a legal purpose.

(2) But paragraph (1)(d) and (e) do not apply if the controller determines that fundamental rights and freedoms of the data subject override the public interest in the transfer.

(3) Where a transfer of data takes place in reliance on paragraph (1) –

(a) the transfer must be documented;

(b) the documentation must be provided to the Authority on request; and

(c) the documentation must include, in particular –

(i) the date and time of the transfer,

(ii) the name of and any other pertinent information about the recipient,

(iii) the justification for the transfer, and

(iv) a description of the personal data transferred.

(4) For the purposes of this Article, a transfer is necessary for a legal purpose if –

(a) it is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings) relating to any of the law enforcement purposes;

(b) it is necessary for the purpose of obtaining legal advice in relation to any of the law enforcement purposes; or

(c) it is otherwise necessary for the purposes of establishing, exercising or defending legal rights in relation to any of the law enforcement purposes.

67C Transfers of personal data to persons other than relevant authorities

(1) The additional conditions referred to in Article 66(2)(b)(ii) are that –

(a) the transfer is strictly necessary in a specific case for the performance of a task of the transferring controller as provided by law for any of the law enforcement purposes; and

(b) the transferring controller –

(i) has determined that there are no fundamental rights and freedoms of the data subject concerned that override the public interest necessitating the transfer,

(ii) considers that the transfer of the personal data to a relevant authority (within the meaning of Article 66) in the third country would be ineffective or inappropriate (for example, where the transfer could not be made in sufficient time to enable its purpose to be fulfilled), and

(iii) informs the intended recipient of the specific purpose or purposes for which the personal data may, so far as necessary, be processed.

(2) Where personal data are transferred to a person in a third country other than a relevant authority, the transferring controller must inform a relevant authority in that third country without undue delay of the transfer, unless this would be ineffective or inappropriate.

(3) The transferring controller must –

(a) document any transfer to a recipient in a third country other than a relevant authority; and

(b) inform the Authority of the transfer.

(4) This Article does not affect the operation of any international agreement in force in respect of Jersey in the field of judicial co-operation in criminal matters and police co-operation.”.

SCHEDULE 2

(Article 9)

CONDITIONS FOR PROCESSING

PART 1 – CONDITIONS FOR PROCESSING PERSONAL DATA

1 Consent

The data subject has consented to the processing of his or her data for one or more specific purposes.

2 Contract

The processing is necessary for –

(a) the performance of a contract to which the data subject is a party; or

(b) the taking of steps at the request of the data subject with a view to entering into a contract.

3 Vital interests

The processing is necessary to protect the vital interests of the data subject or any other natural person.

4 Public functions

The processing is necessary for –

(a) the administration of justice;

(b) the exercise of any functions conferred on any person by or under any enactment;

(c) the exercise of any functions of the Crown, the States or any public authority; or

(d) the exercise of any other functions of a public nature with a legal basis in Jersey law to which the controller is subject and exercised in the public interest by any person.

5 Legitimate interests

(1) The processing is necessary for the purposes of legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed, unless –

(a) the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject, in particular where the subject is a child; or

(b) the controller is a public authority.

(2) The States may by Regulations specify particular circumstances in which the condition set out in sub-paragraph (1)(a) is, or is not, to be taken to be satisfied.

PART 2 – CONDITIONS FOR PROCESSING PERSONAL DATA AND SPECIAL CATEGORY DATA

6 Consent

The data subject has given explicit consent to the processing for one or more specific purposes.

7 Other legal obligations

The processing is necessary for compliance with a legal obligation, other than one imposed by contract, to which the controller is subject.

8 Employment and social fields

The processing is necessary for the purposes of exercising or performing any right, obligation or public function conferred or imposed by law on the controller in connection with employment, social security, social services or social care.

9 Vital interests

The processing is necessary in order to protect the vital interests of –

(a) the data subject or another person, in a case where consent cannot be given by or on behalf of the data subject, or the controller cannot reasonably be expected to obtain the consent of the data subject; or

(b) another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld.

10 Non-profit associations

The processing –

(a) is carried out in the course of its legitimate activities by any body, or association, that is not established or conducted for profit, and exists for political, philosophical, religious or trade union purposes;

(b) is carried out with appropriate safeguards for the rights and freedoms of data subjects;

(c) relates only to individuals who are members of the body or association or have regular contact with it in connection with its purposes; and

(d) does not involve disclosure of the personal data to a third party without the consent of the data subject.

11 Information made public

The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.

12 Legal proceedings, etc.

The processing is necessary for the purposes of –

(a) any legal proceedings;

(b) obtaining legal advice; or

(c) establishing, exercising or defending legal rights.

13 Public functions

The processing is necessary for –

(a) the administration of justice;

(b) the exercise of any functions conferred on any person by or under an enactment; or

(c) the exercise of any functions of the Crown, the States, any administration of the States or any public authority.

14 Public interest

The processing is necessary for reasons of substantial public interest provided for by law and is subject to appropriate protections to protect the rights and interests of the data subject.

15 Medical purposes

(1) The processing is necessary for medical purposes and is undertaken by –

(a) a health professional; or

(b) a person who in the circumstances owes a duty of confidentiality equivalent to that which would arise if that person were a health professional.

(2) In paragraph (1) "medical purposes" includes the purposes of preventative medicine, medical diagnosis, medical research, the provision of care and treatment, the management of healthcare services, occupational medicine and the assessment of the working capacity of the employee.

16 Public health

The processing is necessary for reasons of public interest in the area of public health, including (but not limited to) protecting against cross border threats to health and ensuring a high standard of quality and safety of health care or social care where they are provided for by law and the processing is carried out with appropriate safeguards for the rights and freedoms of data subjects.

17 Archiving and research

The processing –

(a) is in the public interest;

(b) is necessary for the purposes of archiving or for statistical, scientific or historical research;

(c) does not support measures or decisions with respect to any particular data subject otherwise than with the explicit consent of the data subject; and

(d) is carried out with appropriate safeguards for the rights and freedoms of data subjects.

18 Avoidance of discrimination

(1) The processing –

(a) consists of information as to –

(i) any protected characteristic within the meaning of the Discrimination (Jersey) Law 2013, or

(ii) a person's disability, or

(iii) a person's religious beliefs;

(b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment of persons on grounds of any characteristic described in clause (a)(i) to (iii) with a view to enabling such equality to be promoted or maintained;

(c) does not support measures or decisions with respect to any particular data subject otherwise than with the explicit consent of the data subject; and

(d) is carried out with appropriate safeguards for the rights and freedoms of data subjects.

(2) The processing is not contrary to any notice in writing that an individual has given to the controller requiring the controller to cease processing personal data in respect of which the individual is the data subject, such notice taking effect at the end of a period that is reasonable in the circumstances or, if longer, the period specified in the notice.

19 Prevention of unlawful acts

The processing –

(a) is in the substantial public interest;

(b) is necessary for the purposes of the prevention or detection of any unlawful act or unlawful omission; and

(c) in order not to prejudice those purposes, is required to be carried out without the controller's seeking the explicit consent of the data subject.

20 Protection against malpractice and mismanagement

The processing –

(a) is in the substantial public interest;

(b) is necessary for the discharge of any function that is designed for protecting members of the public against –

(i) dishonesty, malpractice, or other seriously improper conduct by, or the unfitness or incompetence of, any person, or

(ii) mismanagement in the administration of, or failures in services provided by, any body or association; and

(c) in order not to prejudice the discharge of that function, is required to be carried out without the controller's seeking the explicit consent of the data subject.

21 Publication about malpractice and mismanagement

(1) The processing –

(a) takes the form of disclosure;

(b) is in the substantial public interest;

(c) is in connection with –

(i) the commission by any person of any unlawful act, or unlawful omission, whether alleged or established,

(ii) dishonesty, malpractice, or other seriously improper conduct by, or the unfitness or incompetence of, any person, whether alleged or established, or

(iii) mismanagement in the administration of, or failures in services provided by, any body or association, whether the mismanagement or failures are alleged or established;

(d) is for the special purposes; and

(e) is made with a view to the publication of those data by any person.

(2) The person who is the controller in relation to the processing reasonably believes that the publication would be in the public interest.

22 Counselling

(1) The processing –

(a) is in the substantial public interest; and

(b) is necessary for the discharge of any function designed for the provision of confidential counselling, confidential advice, confidential support or a similar confidential service.

(2) One or more of the following conditions is satisfied –

(a) the data subject cannot give consent to the processing;

(b) the controller cannot reasonably be expected to obtain the consent of the data subject to the processing; or

(c) the processing must, in order not to prejudice the discharge of the function referred to in sub-paragraph (1)(b), be carried out without the controller's seeking the explicit consent of the data subject.

23 Insurance and pensions: general determinations

(1) The processing –

(a) is necessary for the purpose of –

(i) carrying on insurance business falling within Class I, III or IV of Part 1 of Schedule 1 to the Insurance Business (Jersey) Law 1996, or within Class 1 or 2 of Part 2 of that Schedule, or

(ii) making determinations in connection with eligibility for, or benefits payable under, an occupational pension scheme, being a scheme, or

arrangement, that is constituted in one or more instruments or agreements and has, or is capable of having, effect in relation to one or more descriptions or categories of employments so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category; and

(b) does not support measures or decisions that relate in particular to the person who is the data subject in respect of the personal data.

(2) The controller cannot reasonably be expected to obtain the explicit consent of that data subject to the processing and the controller is not aware of the data subject's withholding his or her consent to the processing.

(3) The personal data consists of information relating to the physical or mental health or condition of a data subject who is the parent, grandparent, great-grandparent or sibling of –

(a) in the case of processing for the purpose referred to in sub-paragraph (1)(a)(i), a person insured (or seeking to be insured) in the course of the insurance business; or

(b) in the case of processing for the purpose referred to in sub-paragraph (1)(a)(ii), a person who is a member of the scheme or seeking to become a member of the scheme.

24 Insurance and pensions: current processing

(1) The processing –

(a) was already under way in relation to the same data subject and by or on behalf of the same controller immediately before the coming into force of this Schedule; and

(b) is necessary for the purpose of –

(i) carrying on insurance business falling within Class I, III or IV of Part 1 of Schedule 1 to the Insurance Business (Jersey) Law 1996, or

(ii) establishing or administering an occupational pension scheme, being a scheme, or arrangement, that is constituted in one or more instruments or agreements and has, or is capable of having, effect in relation to one or more descriptions or categories of employments so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category.

(2) One or both of the following conditions is satisfied –

(a) the controller cannot reasonably be expected to obtain the explicit consent of the data subject to the processing and has not been informed by the data subject that the latter refuses consent to the processing;

(b) the processing must, in order not to prejudice the purpose referred to in sub-paragraph (1)(b), be carried out without the controller's seeking the explicit consent of the data subject.

25 Functions of a police officer

The processing is necessary for the exercise of any function conferred on a police officer by or under any enactment or other law.

26 Regulations

Regulations may –

(a) specify further circumstances in which special category data are processed;

(b) exclude the application of this Schedule in such cases as may be specified;

(c) provide that, in such cases as may be specified, any condition in this Schedule is not to be regarded as satisfied unless such further conditions as may be specified in the Regulations are also satisfied; or

(d) specify circumstances in which processing falling within paragraph 17(a) and (b) is, or is not, to be taken for the purposes of paragraph 17(d) to be carried out with appropriate safeguards for the rights and freedoms of data subjects.

SCHEDULE 3

(Article 66(2)(c))

EXCEPTIONS TO ADEQUACY REQUIREMENTS

1 Order of court, public authorities etc.

The transfer is specifically required by –

(a) an order or judgment of a court or tribunal having the force of law in Jersey;

(b) an order or judgment of a court or tribunal of a country other than Jersey or a decision of a public authority of such a country having the force of law in Jersey that is based on an international agreement imposing an international obligation on Jersey; or

(c) a decision of a public authority in Jersey that is based on such an international agreement.

2 Consent

The data subject has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the data subject due to the absence of an adequacy decision under Article 45 of the GDPR and appropriate safeguards.

3 Contract between data subject and controller

The transfer is necessary for –

(a) the performance of a contract between the data subject and the controller; or

(b) the implementation of pre-contractual measures taken at the data subject's request.

4 Third-party contract in interest of data subject

The transfer is necessary for the conclusion or performance of a contract between the controller and a person other than the data subject.

5 Transfer by or on behalf of JFSC

The transfer is necessary for reasons of substantial public interest, which is taken to be the case if all the following circumstances apply –

(a) the transfer is a disclosure that is permitted or required under an enactment in force in Jersey;

(b) the transfer is made by or on behalf of the Jersey Financial Services Commission (the "JFSC"); and

(c) the JFSC has taken reasonable steps to ensure that the transferee will not transfer the personal data to another person except –

(i) with the consent of the JFSC, or

(ii) in order to comply with an order of a court (whether or not a Jersey court) that directs the transferee to transfer the personal data to the other person.

6 Legal proceedings etc.

The transfer –

(a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings);

(b) is necessary for the purpose of obtaining legal advice; or

(c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

7 Vital interests

The transfer is necessary in order to protect the vital interests of the data subject or of other persons, where –

(a) the data subject is physically or legally incapable of giving consent;

(b) the data subject has unreasonably withheld consent; or

(c) the controller or processor cannot reasonably be expected to obtain the explicit consent of the data subject.

8 Public register

(1) The transfer is made from a register that –

(a) according to the relevant law is intended to provide information to the public; and

(b) is open to consultation either by the public in general or by any person who can demonstrate a legitimate interest.

(2) However, a transfer under this paragraph –

(a) may take place only to the extent that the conditions laid down by the relevant law for consultation are fulfilled in the particular case;

(b) must not involve the entirety of the personal data or entire categories of the personal data contained in the register; and

(c) where the register is intended for consultation by persons having a legitimate interest, may be made only at the request of those persons or where they are to be the recipients of the data.

9 Other exceptions

(1) Where a transfer cannot be based on any other provision of this Law, a transfer to a third country or an international organization may take place only if –

(a) the transfer is not repetitive;

(b) the transfer concerns only a limited number of data subjects;

(c) the transfer is necessary for the purposes of compelling legitimate interests pursued by the controller which are not overridden by the interests or rights and freedoms of the data subject; and

(d) the controller has assessed all the circumstances surrounding the data transfer and has on the basis of that assessment provided appropriate safeguards with regard to the protection of personal data.

(2) Where a transfer is to take place under this paragraph, the controller must –

(a) inform the Authority of the transfer as soon as practicable; and

(b) in addition to providing the information referred to in Article 12, inform the data subject of the transfer and the compelling legitimate interests pursued.

10 Public authorities

Paragraphs 2, 3, 4 and 9 do not apply to activities carried out by public authorities in the exercise of their public powers.

11 Recording of assessment

The controller or processor must document the assessment as well as the suitable safeguards referred to in paragraph 9(1)(d) in the records maintained under Article 14(3) or 22(1)(e).

SCHEDULE 4

(Article 67(2)(b))

BINDING CORPORATE RULES

(1) The Authority must approve binding corporate rules, if those rules –

(a) are legally binding and apply to and are enforced by every member concerned of the group, including their employees;

(b) expressly confer enforceable rights on data subjects with regard to the processing of their personal data; and

(c) fulfil the requirements laid down in paragraph (2).

(2) The rules must include the following content –

(a) the structure and contact details of the group and of each of its members;

(b) the data transfers or set of transfers, including the categories of personal data, the type of processing and its purposes, the type of data subjects affected and the identification of the third country or countries in question;

(c) a statement of their legally binding nature, both internally and externally;

(d) the application of the data protection principles, in particular those mentioned in Article 8(1)(b), (c) and (e), matters covered by Articles 15 and 21 and provisions relating to data quality, the legal basis for processing, processing of special categories of personal data and the requirements in respect of onward transfers to bodies not bound by the binding corporate rules;

(e) the rights of data subjects in regard to processing and the means to exercise those rights, including the right –

(i) not to be subject to decisions based solely on automated processing, in accordance with Article 38,

(ii) to lodge a complaint with the Authority under Article 19 of the Authority Law and to bring proceedings under Article 68 of this Law, and

(iii) to obtain redress and, where appropriate, compensation for a breach of the binding corporate rules;

(f) the acceptance by the controller or processor established on the territory of a Member State of liability for any breaches of the binding corporate rules by any member of the group, the controller or the processor being exempt from that liability, in whole or in part, only if it proves that that member is not responsible for the event giving rise to the breach;

(g) how the information on the binding corporate rules, in particular on the provisions referred to in sub-paragraphs (d), (e) and (f) is provided to the data subjects in addition to the matters required by Article 12;

(h) the functions of any data protection officer appointed under Article 24 or any other person or entity in charge of monitoring compliance with the binding corporate rules within the group, as well as monitoring training and complaint-handling;

(i) the complaint procedures;

(j) the mechanisms within the group for ensuring the verification of compliance with the binding corporate rules, which mechanisms must include the following actions –

(i) data protection audits,

(ii) methods for ensuring corrective actions to protect the rights of the data subject,

(iii) communicating the results of such actions to the person or entity referred to in sub-paragraph (h) and to the board of the controlling undertaking of the group, and

(iv) making those results available upon request to the Authority;

(k) the mechanisms for reporting and recording changes to the rules and reporting those changes to the Authority;

(l) the mechanism for co-operating with the Authority to ensure compliance by any member of the group, in particular by making available to the Authority the results of the actions referred to in sub-paragraph (j)(i) and (ii);

(m) the mechanisms for reporting to the Authority any legal requirements to which a member of the group is subject in a third country that are likely to have a substantial adverse effect on the guarantees provided by the binding corporate rules; and

(n) the appropriate data protection training to personnel having permanent or regular access to personal data.

(3) In this Schedule "group" means the group of undertakings, or group of enterprises engaged in a joint economic activity to which the binding corporate rules apply.

(4) Regulations may amend the content that the rules must include under this Schedule.

SCHEDULE 5[12]

(Article 86)

SAVINGS AND TRANSITIONAL ARRANGEMENTS

1 Interpretation

In this Schedule "2005 Law" means the Data Protection (Jersey) Law 2005.

2 Processing underway at time of commencement of this Law

(1) Where, at the time of commencement of Article 87, consent to the processing of personal data was obtained in compliance with the requirements of the 2005 Law, that consent, to the extent that it was not given in a manner that complies with this Law, has effect up to and including 25th May 2019.

(2) Where, at the time of commencement of Article 87, the specified information (within the meaning of Article 12(4)) was provided by the controller to the data subject in compliance with the requirements of paragraph 2 of Part 2 of Schedule 1 to the 2005 Law, to the extent that such compliance is not compliant with Article 12 of this Law, the controller is nevertheless treated as complying with it until 25th May 2019.

3 Request for information and copy of personal data

A request for information and a copy of personal data under Article 7 of the 2005 Law that has not been complied with on the commencement of Article 28 of this Law is treated as a request under Article 28 of this Law save that –

(a) the controller has 40 days to answer the request; and

(b) no fee paid is refundable.

4 Right to compensation for inaccuracy, loss or unauthorized disclosure

A claim for compensation under Article 13 of the 2005 Law that remains outstanding on the commencement of Article 69 of this Law is treated as if that Article 13 continued in force.

5 Application for rectification, blocking, erasure or destruction

An application for rectification, blocking, erasure or destruction under Article 14 of the 2005 Law that remains outstanding on the commencement of Articles 31 and 32 of this Law is treated as if that Article 14 continued in force.

6 Self-incrimination, etc.

(1) In Article 58 of this Law and paragraph 1(9) of Schedule 1 to the Authority Law, any reference to an offence under this Law or the Authority Law includes a reference to an offence under the 2005 Law.

(2) In Article 43(9), Article 44(10) and paragraph 11 of Schedule 7 of the 2005 Law, any reference to an offence under that Law includes a reference to an offence under this Law or the Authority Law.

7 General: references to Data Protection Commissioner

(1) This paragraph is subject to any express provision, or implication, to the contrary in or under this Law or any other enactment, or in any agreement or other document.

(2) A reference in any enactment, agreement or other document to the Data Protection Commissioner shall, on and from the commencement of the Authority Law, become a reference to the Data Protection Authority.

(3) Accordingly, any application made to the Data Protection Commissioner, any proceedings commenced with the Data Protection Commissioner as party, or anything else involving the Data Protection Commissioner, being an application, proceedings or thing that has not been finally determined, or finished, when the Authority Law comes into force may be determined or continued by the Authority.

(4) Furthermore, any record or requirement made by, any information given to, any document deposited with, any record kept by, or any statement made to, the Data Protection Commissioner in the exercise of any of the Commissioner's functions before the commencement of Article 2 of the Authority Law is taken, on and from that time, to have been made by, given to, deposited with, kept by or made to, the Authority.

8 General saving (except for Regulations, Rules or Orders)

(1) Except as provided otherwise in this Schedule and Article 16(7) of, or Schedule 2 to, the Authority Law, anything made or done by any person under any provision of the 2005 Law (being a thing that still had force or effect immediately before the repeal of that provision by this Law), if there is a provision under this Law that gives power to make or do such a thing, is taken to have been made or done under the latter provision.

(2) Subject to paragraph (1), Regulations, Rules, or any Order made under the 2005 Law cease to be in force when this paragraph comes into force.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement	◦Projet No (where applicable)
Data Protection (Jersey) Law 2018	L.3/2018	25 May 2018, except as follows Part 5, 25 November 2018 Articles 17 and 18, 25 May 2019 The modifications in paragraph 11 of Schedule 1, in so far as they relate to the insertion of paragraphs (3B), (3C) and (3D) into the modified version of Article 21, 6 May 2023	P.116/2017
States of Jersey (Transfer of Responsibilities and Functions) (Chief Minister to Economic Development, Tourism, Sport and Culture) Order 2019	R&O.74/2019	22 August 2019	
European Union (United Kingdom Exit – Miscellaneous Amendments) (Jersey) Regulations 2019	R&O.9/2019	11pm on 31 January 2020 (R&O.3/2020)	P.148/2018
Data Protection (Amendment of Law) (Jersey) Regulations 2020	R&O.143/2020	25 November 2020	P.121/2020
States of Jersey (Transfer of Justice Functions – Chief Minister to Justice and Home Affairs) Order 2023	R&O.76/2023	21 September 2023	
States of Jersey (Ministerial Offices – Minister for Sustainable Economic Development) Order 2023	R&O.102/2023	24 November 2023	

◦Projets available at statesassembly.gov.je

Table of Renumbered Provisions

Original	Current
87	Spent, omitted
88(1)	87
88(2)	Spent, omitted
88(3)	Spent, omitted
Schedule 6	Spent, omitted

Table of Endnote References

[1] *Article 1(1)* — *definition of "GDPR", editorial change, "2016/79" deleted, "2016/679" inserted instead*

[2] *Article 1(1)* — *amended by R&O.74/2019, R&O.9/2019, R&O.102/2023*

[3] *Article 1(3A)* — *inserted by R&O.9/2019, amended by R&O.143/2020*

[4] *Article 1(4)* — *amended by R&O.9/2019*

[5] *Article 8(2)* — *editorial change, "organization" deleted, "organizational" inserted instead*

[6] *Article 33(1)* — *editorial change to sub-paragraph (d), "Articles" deleted, "Article" inserted instead*

[7] *Article 41(2)* — *amended by R&O.76/2023*

[8] *Article 41(5)* — *amended by R&O.76/2023*

[9] *Article 41(9)* — *amended by R&O.76/2023*

[10] *Article 72, table* — *amended by R&O.76/2023*

[11] *Article 80(1)* — *editorial change, "66" deleted, "67" inserted instead*

[12] *Schedule 5* — *editorial change, in paragraph 2(2), "that the such compliance is not compliance" deleted, "that such compliance is not compliant" inserted instead*