

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* HOME AFFAIRS

DATA PROTECTION: UNITED KINGDOM ADEQUACY AND DATA SHARING

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'Data Protection: United Kingdom Adequacy and Data Sharing', they are of the opinion:-

1. To approve the continuation of the designation of the UK as an authorised jurisdiction for the purposes of the Data Protection (Bailiwick of Guernsey) Law, 2017; and
2. To approve the Ordinance entitled "The Data Protection (Authorised Jurisdiction) (Bailiwick of Guernsey) (Amendment) Ordinance, 2020".

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

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of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* HOME AFFAIRS

DATA PROTECTION: UNITED KINGDOM ADEQUACY AND DATA SHARING

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port
Guernsey

2nd November 2020

Dear Sir

1. Executive Summary

- 1.1. The purpose of this Policy Letter is to request the approval of the States of Deliberation in respect of matters in the attached draft Ordinance, namely "The Data Protection (Authorised Jurisdiction) (Bailiwick of Guernsey) (Amendment) Ordinance, 2020". Approval of the draft Ordinance will ensure that the status quo regarding the continued free-flow of personal data between the Bailiwick of Guernsey and the United Kingdom ("UK") is maintained for a further year in the event that the UK does not receive an adequacy decision in respect of data protection by 31st December 2020.
- 1.2. This Policy Letter follows on from the previous Policy Letter "Data Protection: Data Sharing with the United Kingdom" [Billet d'État No. II of 2019, P.2019/4].

2. Background

- 2.1. "The Data Protection (Authorised Jurisdiction) (Bailiwick of Guernsey) Ordinance, 2019" was approved by the States of Deliberation on 30th January 2019 and designated the UK as an "authorised jurisdiction" for a specified time period. This Ordinance ensured that the free-flow of personal data between the Bailiwick of Guernsey and the UK was maintained in the event of a no-deal Brexit. The Ordinance will expire at the end of 31st December 2020, the date at which the UK were expecting to have received confirmation of their own adequacy from the European Commission.

3. Adequacy

- 3.1. 'Adequacy' enables third countries to apply to the European Commission ("the Commission") for recognition that their own data protection regime provides protection of personal data that is 'essentially equivalent' to that found within the EU. Where a third country is given 'adequacy' status from the Commission, personal data can be transferred to that third country without the requirement for any additional safeguards as specified within the General Data Protection Regulation ("the GDPR").
- 3.2. The Bailiwick of Guernsey currently has 'adequacy' status under the previous EU data protection legislation: the Data Protection Directive ("the Directive"), however legislative and regulatory changes were required locally in order to maintain this status under the GDPR. Existing adequacy decisions made under the Directive remain in force until they are amended, replaced or repealed.
- 3.3. A review of the Bailiwick of Guernsey's adequacy decision is currently being undertaken by the Commission, with a decision expected by the end of 2020. This review has been ongoing throughout 2020.
- 3.4. The UK Department for Digital, Culture, Media and Sport ('DCMS') has advised that discussions with the Commission with regards to the UK's adequacy are ongoing. Whilst they are hopeful that the UK will receive its adequacy decision by the end of 2020, the Bailiwick of Guernsey needs to prepare alternative provisions should the specified timeframe not be achieved.
- 3.5. The DCMS has further advised that other third-country jurisdictions are working to guarantee that data-flows to the UK will continue after 31st December 2020.

4. Data Sharing

- 4.1. The Bailiwick of Guernsey is home to a number of global businesses which rely heavily on the unrestricted flow of personal data to and from EU Member States; this is particularly crucial for the financial services sector. It is also important to highlight that the UK is currently the Island's biggest data sharing partner and therefore it is imperative that an unrestricted data flow between the Bailiwick of Guernsey and the UK is maintained.
- 4.2. In addition to private sector requirements, the Bailiwick of Guernsey's public authorities also routinely share personal data with UK Government Agencies in crucial areas such as Policing, Security, Health Care and Education. It is of the utmost importance that public authorities can continue to share personal data with the UK for intelligence and security purposes.

- 4.3. The need to safeguard the Islands' current data sharing practices is a clear objective and this is reflected in the 'Future Guernsey – Policy & Resource Plan Phase One' (approved by the States of Deliberation on 16th November 2016) and ties in to two of the four themes; 'Our Quality of Life – safe and secure place to live' and 'Our Economy – strong, sustainable and growing'.

5. “Sunset Clause”

- 5.1. “The Data Protection (Authorised Jurisdiction) (Bailiwick of Guernsey) Ordinance, 2019” designated the UK as an “authorised jurisdiction”. This designation meant that data can be freely transferred from the Bailiwick to the United Kingdom just as it can be freely transferred to Member States of the European Union.
- 5.2. However, that Ordinance included a “sunset clause” in order to provide the UK with a suitable window of time to achieve its own adequacy decision, in accordance with the withdrawal agreement of the United Kingdom and Northern Ireland from the European Union. That Ordinance was specified to expire on 31st December 2020, the date at which the UK were expecting to have received an adequacy decision from the Commission.
- 5.3. Whilst the UK is still expecting to receive an adequacy decision by the end of 2020, there is a real risk that this timeframe will not be achieved. If this were to be the case, the Bailiwick of Guernsey would be left in a position where the sharing of personal data with the UK would be unlawful and technically would have to cease.
- 5.4. In order to avoid this and to maintain the free flow of personal data to the UK, the Bailiwick of Guernsey must be prepared with alternate provisions. As such, it is recommended that the Assembly approve "The Data Protection (Authorised Jurisdiction) (Bailiwick of Guernsey) (Amendment) Ordinance, 2020" in order to extend the “sunset clause” for data sharing with the United Kingdom.
- 5.5. If approved, this Ordinance would ensure that the UK continues to be designated as an “authorised jurisdiction” until 31st December 2021.

6. Consultation

- 6.1. The following have been consulted and no objections were raised:
- a) the Data Protection Authority;
 - b) the Policy and Finance Committee of the States of Alderney; and
 - c) the Policy and Finance Committee of the Chief Pleas of Sark.

- 6.2 In accordance paragraph 5.2.1 of the Directive regarding the submission of propositions to the States of Deliberation¹, the Committee has obtained prior permission from the Presiding Officer for this Policy Letter and draft Ordinance to be considered at the same meeting of the States.

7. Conclusions

- 7.1. It is proposed that the Assembly approve the extension of the "sunset clause" in the Data Protection (Authorised Jurisdiction) (Bailiwick of Guernsey) Ordinance, 2019 by one year and consequently approve the "The Data Protection (Authorised Jurisdiction) (Bailiwick of Guernsey) (Amendment) Ordinance, 2020".
- 7.2. This will maintain the status quo for a further year regarding the continued free-flow of data between the Bailiwick of Guernsey and the UK in the event that the UK does not achieve its own adequacy decision by the end of 2020.

8. Compliance with Rule 4

- 8.1. Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 8.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 8.3 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Committee.
- 8.4 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee to advise the States and to develop and implement policies on matters relating to its purpose, including data protection.
- 8.5 Also in accordance with Rule 4(5), the Committee has consulted as detailed in paragraph 6 of this Policy Letter.

Yours faithfully

R G Prow
President

S P J Vermeulen

¹ [HM Greffier Directive No.1 of 2018](#)

Vice-President

M P Leadbeater

C J Le Tissier

A W Taylor

The Data Protection (Authorised Jurisdiction) (Bailiwick of Guernsey) (Amendment) Ordinance, 2020

THE STATES, in exercise of the powers conferred on them by sections 108 and 111(1) of the Data Protection (Bailiwick of Guernsey) Law, 2017^a and following consultation with the Policy and Finance Committee of the States of Alderney, the Policy and Finance Committee of the Chief Pleas of Sark and the Data Protection Authority, hereby order:-

Amendment of Ordinance of 2019.

1. (1) The Data Protection (Authorised Jurisdiction) (Bailiwick of Guernsey) Ordinance, 2019^b is amended as follows.

(2) In section 4 of that Ordinance, for "2020", substitute "2021".

Citation.

2. This Ordinance may be cited as the Data Protection (Authorised Jurisdiction) (Bailiwick of Guernsey) (Amendment) Ordinance, 2020.

Commencement.

3. This Ordinance shall come into force on the 31st December, 2020.

^a Order in Council No. VI of 2018; as amended by Order in Council No. IV of 2018; Ordinance Nos. VIII and X of 2018 and G.S.I. No. 21 of 2018.

^b Ordinance No. I of 2019.