

Briefing Note 26 January 2018

Data Protection Update: New Data Protection Law is approved by the States of Guernsey

This note is for information purposes only and is not intended to be legal advice.

This briefing note follows our previous update in October 2017 concerning the impact in Guernsey of the General Data Protection Regulation (“GDPR”).

On 29 November 2017 the States of Guernsey resolved to approve the draft Data Protection (Bailiwick of Guernsey) Law 2017 (the “DPL”). The DPL now requires Royal Assent. It is expected to come into force on or around 25 May 2018, at the same time that the GDPR comes into effect across the EU.

Guernsey was the first Crown Dependency to approve a new law to implement the requirements of the European General Data Protection Regulation 2016/679 (“GDPR”) and the Law Enforcement Directive (EU 2016/680). Jersey’s equivalent draft law was approved by the States Assembly on 18 January 2018. The Isle of Man Government also intends to introduce new data protection legislation for May 2018 and recently published its draft legislation which is open for consultation until 5 March 2018.

Issues of note in the new law

The DPL imposes duties on data controllers (those who decide how and why data is processed) and data processors (those who process the personal data) and confers rights on the people to whom the personal data relates (data subjects). It also provides for the free movement of personal data and establishes a new regulatory regime.

A few highlights of the DPL are:

- The new Data Protection Authority

Guernsey will no longer share a regulator with Jersey. Part XI of the DPL establishes a new Data Protection Authority. This new regulatory authority will provide the higher level of effectiveness and independence required under the GDPR (this requirement was mentioned in our May 2017 update). The enforcement powers and duties of the Authority will include the power to require information, obtaining warrants, the investigation of complaints, initiating inquiries and the imposition of sanctions including fines, which are potentially much more substantial than previously, reaching up to as much as £10,000,000 in certain cases (Part XII and Schedule 7).

Data processors and controllers will need to register with the Authority and pay a fee to cover its costs (Schedule 4).

- New civil actions and criminal offences created

The DPL creates new civil actions which can be brought against controllers or processors for breach of statutory duty where the breach causes damage. “Damage” is defined widely to include financial loss, distress, inconvenience and other adverse effects.

New criminal offences are also created, such as unlawfully obtaining or disclosing personal data without the consent of the controller and related offences of procuring, selling or retaining such data.

More general issues

There is some uncertainty about how elements of the GDPR (and the DPL which reflects its requirements) will be interpreted or applied in practice. The Article 29 Data Protection Working Party, an independent advisory body made up of representatives from national and EU data protection regulators, including the UK ICO, is developing guidance on GDPR issues. For example, its guidance usefully explains when a Data Protection Officer must be designated and gives detail on its role and tasks. It has also issued guidance on “data portability”, ie., the right to receive and transmit one’s data between data controllers without hindrance (eg., being able to switch from one mobile device to another without losing saved information). The guidance on Data Protection Impact Assessments (“DPIAs”) is aimed at helping organisations decide when to carry out a DPIA, how to do it, when to consult with a regulator and contains useful examples of DPIA frameworks, methodologies and criteria. There are many other areas where guidance is awaited.

The Trust industry is of utmost importance to Guernsey. Currently, Guernsey Trusts are exempt from the provisions of the Data Protection (Bailiwick of Guernsey) Law 2001 which entitle individuals to have access to data held about them, to the extent that disclosing such information would be otherwise

prohibited or restricted under Guernsey law. Whilst the DPL does not contain a specific exemption with regard to transparency and subject right provisions for Trusts (in contrast to the Draft Jersey Law), it is expected that appropriate subsidiary legislation will be put in place shortly after the DPL comes into force confirming this.

Guernsey businesses need to prepare now for the DPL coming into force in May 2018. Babbé LLP will be providing further briefing notes as further guidance is issued by the Article 29 Working Party and other regulators.

If you would like Babbé to come and talk to you about the new DPL and its relevance to your business, please register your interest below.

[CLICK HERE](#)



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