

BAILIWICK OF GUERNSEY



DATA PROTECTION COMMISSIONER REPORT FOR 2001



Bailiwick of Guernsey Photomap © States of Guernsey 2002.

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FOREWORD

I am pleased to present the first public report on Data Protection in the Bailiwick of Guernsey, covering the calendar year ending 31st December, 2001.

As this is my first report, I have taken the opportunity to include some background information and historical data to put the report into perspective.

I was appointed to the post of Data Protection Commissioner for the Bailiwick of Guernsey in October 2001 and accordingly this report also covers work undertaken by my predecessor, Mr. Winston Bull.

I should like to express my appreciation for the work done by Mr. Bull (and his predecessor, Advocate Diana Thompson) in laying a firm foundation for the legislation that was passed by the States in November 2001 and in establishing many of the administrative procedures necessary for its effective implementation.

I also welcome the fact that the Advisory and Finance Committee agreed, on the recommendation of the former Commissioner, to a substantial increase in the resources to be devoted to Data Protection and that a separate office should be established to underline the independence of this function. This office opened in Frances House in January 2002.

These actions contributed to the process of ensuring that the Bailiwick will be recognised as having an adequate régime for the protection of personal data, thereby facilitating the free exchange of personal data between the Bailiwick, EU Member States and other adequate territories and regulating the flow of data to countries where the protection may be inadequate.

In the coming year I look forward to the commencement of the Law and to the realisation of the enhanced protection that it affords both to the citizens of the Bailiwick and to the clients of our international business community.

A handwritten signature in black ink, appearing to read "Peter Harris", with a horizontal line drawn underneath it.

P.R. Harris

May 2002

GUERNSEY'S GEOGRAPHY AND POLITICS

The Bailiwick of Guernsey is located in British waters in the Bay of St. Malo area of the English Channel and comprises the Island of Guernsey (with the adjacent inhabited islets of Herm and Jethou), Alderney and Sark. The Bailiwick was part of the Duchy of Normandy in the eleventh century when Duke William, following his conquest of England, also became King William I of England. It has since 1204 been a possession of the English Sovereign as successor to that part of the Duchy of Normandy which was not subsequently surrendered to the Kings of France.

The Bailiwick is not part of the United Kingdom nor the European Union and has no representation in the UK Parliament at Westminster nor at the European Parliament. It operates as an independent state with wide powers of self-government and generally neither receives subsidies from, nor pays contributions to, the United Kingdom or the European Union.

The United Kingdom government is responsible for the international relations and the defence of the Bailiwick.

The position of the Bailiwick in respect of the European Union is governed by Articles 25-27 of, and by Protocol 3 to, the 1972 Treaty of Accession of the United Kingdom to the EEC.

These Articles provide that the Community Treaties shall apply to the Bailiwick only to the limited extent described in the Protocol: in general, community legislation has no direct effect and may only be extended to the Bailiwick with the consent of its legislature, known as the States of Guernsey.

Although, as a consequence of Protocol 3, Guernsey is a "Third Country" as far as the European Union is concerned, it may, in appropriate cases, enact legislation that complies with relevant EU Directives.

More detailed information on the Bailiwick may be found on the individual websites of the government bodies of the islands that comprise the Bailiwick¹

¹ www.gov.gg - www.alderney.gov.gg - www.sark.gov.gg

COUNCIL OF EUROPE

The Council of Europe¹ was formed immediately after the Second World War as a means of bringing stability to Europe by fostering co-operation between member states.

Any state can become a member of the Council of Europe provided that it accepts the principle of the rule of law and guarantees human rights and fundamental freedoms to anyone under its jurisdiction. There are now 43 Member States, and the UK was a founder-member.

The Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data (108) was opened for signature in January 1981 and was the first legally binding international instrument in the data protection field. The UK ratified its signature of the Treaty in 1987 and extended its ratification to the Bailiwick of Guernsey at that time.

The Additional Protocol to Convention 108, opened for signature in November 2001, requires parties to set up independent supervisory authorities and to regulate the transborder flow of personal data. The UK signed the Protocol on 8th November 2001, extending its signature to cover the Bailiwick of Guernsey at that time.

¹ www.coe.int

LEGISLATION

Data Protection (Bailiwick of Guernsey) Law 1986

The Data Protection (Bailiwick of Guernsey) Law 1986¹, which came into effect in 1987, established eight principles of data protection:-

1. Information shall be obtained and processed fairly and lawfully.
2. Personal data shall be held for only one or more specified and lawful purposes
3. Personal data shall not be used or disclosed in any manner incompatible with that purpose or those purposes
4. Personal data shall be adequate and not excessive for those purposes
5. Personal data shall be accurate and where necessary, kept up to date
6. Personal data shall not be kept for longer than is necessary
7. An individual shall be entitled to be informed of and have access to any personal data held by a data user and where appropriate to have such data corrected or erased.
8. Appropriate security measures shall be taken

Following the passage of this legislation, the Bailiwick was able to be included in the United Kingdom's ratification of Council of Europe Convention 108 which established common minimum standards to be applied to the automated processing of personal data.

In 1995 the European Commission published a Directive on Data Protection, 95/46/EC, that specified more stringent criteria that Member States should transpose into their domestic legislation. These included increased rights for data subjects and a prohibition on the transfer of personal data to those countries that did not offer an adequate level of protection.

Member States were given three years to bring their legislation up to the standards of the Directive. The U.K. enacted the Data Protection Act (1998) to give effect to the Directive and the Act came into force on 1st March 2000.

Data Protection (Bailiwick of Guernsey) Law 2001

The Data Protection (Bailiwick of Guernsey) Law 2001 (to replace the current 1986 Law) is expected to be brought into force in the Summer of 2002. The Projet de Loi was approved by the States in November 2001, and by the States of Alderney and Sark Chief Pleas at the turn of the year.

During 2001 the former Commissioner and current Commissioner spent a large proportion of their time in liaison with the Law Officers and other interested parties who were involved in the development of this major item of legislation.

¹ Order in Council XXXII of 1996

The intention to upgrade the current Law follows moves across Europe, via the 1995 European Directive on Data Protection to strengthen the rights for individuals in the face of advancing information technologies. Guernsey is closely modelling its new Law on the 1998 UK Act as the Bailiwick wishes to see its citizens with rights similar to those enjoyed by European citizens and to safeguard its trading position with Europe.

The new Law will contain familiar elements from the current 1986 legislation including; the Data Protection Principles of good practice covering such things as accurate records, retention periods for data and appropriate security safeguards; a registration system; an independent supervisory authority to oversee data protection matters; and the data subject's right to have access to his or her personal data, held by say, his/her employer or bank and to correct it where inaccurate.

New areas will include some manually held records, sensitive data rules and (as mentioned above) additional rights for individuals. These will include;

- enhanced access rights
- the right to prevent processing for direct marketing purposes
- rights in relation to automated decision-taking
- the right to compensation
- rights in relation to the rectification, blocking and destruction of personal data
- the right to ask the Commissioner to assess whether the Act has been contravened by an organisation

An important element of the new Law will ensure that personal data is not transferred outside the Bailiwick or EEA countries (the European Union plus Norway, Iceland and Liechtenstein) unless it is to a country providing adequate security safeguards. EC findings have to date established that Switzerland, Hungary, and Canada offer adequate protection. As the USA does not have federal data protection laws US based companies can achieve compliance by adhering to the Safe Harbour Privacy Principles issued by the US Department of Commerce.

Where adequacy cannot be established, alternative safeguards may include the transfer being made with the consent of the individual or under appropriate inter company agreements or third party contracts (for details of EC decisions on standard contract clauses see¹ below).

A new exemption from the need to notify (formerly register) with the Commissioner's office will be included to cover the core business purposes of staff administration, advertising, marketing and public relations, accounts and records. This should assist some organisations although compliance with the good practice Principles will still be required.

The new Law will provide a period of transitional relief during which data controllers can bring their existing systems into compliance with the new provisions. Organisations already complying with the 1986 Law should be well placed to meet the requirements of the revised legislation.

¹ http://www.europa.eu.int/comm/internal_market/en/dataprot/news/clauses2.htm

STAFFING

The 1986 Law provided for the Advisory and Finance Committee to undertake the roles and responsibilities of Data Protection in the Bailiwick.

The Committee initially appointed a Data Protection Officer, Michael Clarke, on a part-time basis, to carry out its responsibilities and, once the Law was fully in place, the role of Data Protection Officer was delegated to the Manager of Information Services.

Following the publication of the European Commission Data Protection Directive in 1995, it became apparent that an independent Commissioner would be needed before it would be possible for the Bailiwick to be granted adequate status by the Commission.

Accordingly, the Committee appointed Advocate Diana Thompson, in May 1998, to the position of Data Protection Commissioner (designate) again on a part-time basis. She was succeeded by Mr. Winston Bull in December 1999.

In July 2000, the States approved the drafting of new legislation and, in the interim, the Data Protection (Office of Commissioner) Ordinance¹ that created the office of an independent Commissioner. Mr. Bull's appointment as the first Commissioner for the Bailiwick was approved by the States. The office of Commissioner continues under the 2001 Data Protection Law, with amended responsibilities.

In January, 2001 the staff resources comprised the Commissioner, who worked part time, together with administrative assistance on an ad-hoc basis from the Information Services Department, the Policy Unit, and a part-time typist.

Following consideration of a paper by the Commissioner, the Advisory and Finance Committee agreed to increase the resources devoted to Data Protection.

The reasons for this increase in resource were identified as the need:

- a) to oversee the introduction and implementation of the new Law;
- b) to ensure that the Bailiwick was properly represented in international fora.

In April the office was pleased to acquire the services of Richard Ansell as temporary Assistant Commissioner, on secondment from the UK Information Commissioner's office in Wilmslow, Cheshire. His primary role, using his data protection experience of some sixteen years, has been to raise awareness of the forthcoming Law through the provision of seminars to both public and private sector organisations.

¹ Ordinance V of 2000.

During the period April to December 2001, Mr. Ansell made 18 presentations, speaking to just over 600 people across the Bailiwick, with invitations being accepted to give seminars on both Alderney and Sark.

The Assistant Commissioner has also gained experience of existing registration procedures and assisted with developing the new on-line notification system and related administrative procedures.

In July, the States approved the appointment of Dr. Peter Harris to the office of Data Protection Commissioner. He took up his appointment on a full time basis from 1st October and at the same time Mrs. Ozanne, who had provided part-time typing services for the office over many years, was formally appointed to the post of Administrative Assistant.

It is intended that, once Mr. Ansell's contract comes to an end, he will be replaced as Assistant Commissioner by an officer on secondment from the Civil Service who would be primarily responsible for ensuring compliance with the Law.

RAISING AWARENESS

Publications

A number of Guidance Notes have been produced during the year. These are accessible via the revised website and are available as hard copies from the Data Protection office. The Notes provide a broad overview of the following subjects:-

- Summary of the Law
- Implementation Timetable
- Guidance for Individuals
- Guidance for Charities
- Guidance for Small Businesses
- Guidance for States' Committees
- Guidance for Financial Institutions

Logo

A new logo was developed for the office in order to enhance the corporate branding.

It comprises the familiar shield that is associated with the Bailiwick, surrounded by a "ring of protection", and has stylistic similarities to the logos used by some other data protection authorities around the world.

Media Releases

Regular Press Releases were issued during the year, resulting in a dozen articles appearing in the Guernsey Press that included mention of Data Protection, and a number of mentions on TV News. The Commissioner was also interviewed on local radio about the implications of the forthcoming legislation.

Seminars

A series of awareness seminars was given by the Assistant Commissioner to help explain the changes which the new Law will introduce. These seminars were aimed to appeal to a wide audience, from those new to data protection to experienced compliance officers.

Content included a brief look at the origins of data protection, the current 1986 Law, similarities with the new Law and the significant changes ahead. The expected implementation timetable for the new Law (including transitional arrangements) was covered and each session closed with an action plan for managing the changes. Through liaison with the Training Agency in Smith Street, seven 1½ hour presentations were provided to mainly private sector audiences. A further five were made to public sector

staff arranged through the Civil Service Board Training and Development Unit. Feedback suggested that most delegates found the sessions useful and informative.

Shorter seminars were also given at a number of lunchtime meetings held by professional bodies and institutions.

In addition to the above, following discussions with the Guernsey Business School (GBS) The Assistant Commissioner attended and provided input to a number of IT Manager and Human Resource Manager Workshops held at the GBS site and the Peninsular Hotel.

Website

The website was renamed www.dataprotection.gov.gg for consistency with the UK and Jersey and to aid its location by search engines.

The range of information on the website was expanded during the year to include guidance on the effects of the new Law.

Requests for information packs are now routinely received from the website.

The *Projet de Loi* was published on the Internet as was the explanatory Policy Letter that was approved by the States in July 2000.

It is proposed to develop the website further in 2002 to include an on-line copy of the notification register and to provide an on-line means for data controllers to enter particulars of their processing to the notification register.

Meetings Held

Credit Referencing Agencies – Proposed regulations including a Statement of Rights for Individuals, whose details are held by Credit Reference Agencies, were discussed with local Agencies.

Audit Commission – The office met with the Commission on 14 May and provided a progress report on the new Law.

Data Protection Working Party – This public sector forum met on 29 June. Concerns of mutual interest included widening the use of the Guernsey Social Security Authority number, data sharing initiatives across States Departments and audit/data health checks.

Separate meetings were held with senior staff of the Traffic Committee and the Children Board to discuss compliance with the Data Protection Law.

Bailiwick of Guernsey Data Protection Report for 2001

Guernsey Police/Avon and Somerset Constabulary – A meeting was held in July to discuss the issue of enforced subject access and Guernsey Police's use of the UK Police National Computer. The right of subject access under the current Law allows individuals to know what is being held about them, broadly speaking, on computer and to obtain a copy of that information. This right is undermined to some degree by prospective employers in the UK and steps have been taken to remedy this on the mainland. The Bailiwick wishes to adopt appropriate safeguards in this area and the matter will be reviewed once the new Law is in place.

Drug Strategy Unit – The office met with Unit representatives in October to discuss the impact of data protection Law on proposals to generate statistics relating to the delivery of multi-agency services.

Guernsey Post Office – A meeting was held with a representative of the Post Office in November to discuss the data protection aspects of possible e-business ventures.

Human Rights Act Workshop – The Commissioner and his Assistant provided data protection input to a two day HRA workshop for public bodies organised by the Civil Service Board held at The Mallard Conference Centre on 12/13 December.

Board of Health – The Commissioner attended a meeting with the Board of Health and Medical Practices in December and provided data protection advice in relation to a number of medical issues.

Guernsey Geographical Information Service – The Commissioner continues as a member of the GGIS Management Board in order to provide data protection advice to the Board.

Guernsey Association of On-line Enterprise – The Commissioner was invited to participate in this liaison group run by the e-business team at the Board of Industry.

EXTERNAL LIAISON

UK Government Liaison

During the year responsibility for Data Protection moved from the Home Office to the Lord Chancellor's Department, although the officials within the Freedom of Information and Data Protection Unit remained the same.

The Commissioner maintained regular contact with the unit and attended the annual liaison meeting in London on 3 December together with his opposite numbers from Jersey and the Isle of Man.

A number of issues were discussed, including:

- Progress with the Islands' legislation;
- Implementation issues concerning the EC Data Protection and Telecommunications Directive;
- Implications of the Home Office anti-terrorism legislation;
- Police and Customs issues including the impact of the Criminal Records Bureau

Following consultation with Alderney and Sark, the Commissioner was able to recommend that the UK Government extend its signature of the Additional Protocol to European Convention 108 to the Bailiwick.

International Liaison

British and Irish Data Protection Authorities (BIDPA) – Guernsey hosted this twice yearly gathering of data protection authorities from the UK, Jersey, Isle of Man and Republic of Ireland on 30 April/1 May. Topics discussed included the use of the Police National Computer by the Islands, privacy audits, credit reference agencies, work place monitoring of staff and cyber crime.

The second BIDPA meeting of the year was held as usual, at the U.K. Information Commissioner's offices in Wilmslow on 16/17 October. Whilst each authority presented a country report in the usual manner and discussed various areas of interest, the bulk of the meeting was concerned with structural planning for the 24th International Data Protection Conference in Cardiff from 8 – 11 September 2002. This event is being co-hosted by the BIDPA countries. Themes, speakers, venues etc. were discussed in conjunction with the conference organisers.

The 23rd International Conference of Data Protection and Privacy Commissioners - The Commissioner attended this conference held in Paris from 24 to 26 September 2001.

The immediate aftermath of the 11 September terrorism incident adversely affected the attendance with very few delegates from the U.S. being able to attend. Nevertheless over 350 delegates from over 50 states and 5 continents took part.

Bailiwick of Guernsey Data Protection Report for 2001

The theme of the Conference was Personal Privacy – a Human Right and the topics covered included:

Projects and People

The Third Millennium or The Technological Odyssey

Biometrics and Face Recognition

Localisation Techniques

Personal Data and Privacy Protection: the Pedagogics at Issue

Cybercrime and Cybersurveillance: for Cybertizenship

Private Life – Working Life

Health at the Heart of Files

Company Changes, Personalisation of Services

Technologies for Privacy Protection

Electronic Democracy

Companies and Personal Data Protection : what Initiatives and what Organisation to ensure Confidence

One World, One Privacy

The 2002 Conference is to be held in Cardiff and will be hosted jointly by the UK, Irish, Guernsey, Jersey and Isle of Man authorities. The Commissioner is grateful to the Advisory and Finance Committee for approving the funding required to participate as a joint host for this conference.

OTHER ISSUES

Pensions Scheme Trustees

Following enquiries from a number of insurance companies, a press release was issued to clarify the registration requirements for companies or individuals who act as trustees of staff pension schemes but use third party service providers in the UK or EEA to process the data.

Administrators of Company Trusts, Funds, etc.

General advice was produced and incorporated into our Guidance Note for Financial Institutions to clarify the position where administrators act as a sole data controller managing the affairs of numerous client companies.

Commercial provision of data protection registration/notification services

The UK Commissioner's Legal Department contacted the office concerning a commercial organisation offering a registration/notification service on a profit making basis. Whilst such a service is not illegal, steps have been taken to prevent any organisation establishing a business in the Bailiwick in a name similar to the Commissioner's title or office. This should ensure that those wishing to register/notify through official channels are not misled.

Police use of CCTV

Following discussions with Guernsey Police, it was agreed that explanatory signs should be prominently displayed where individuals enter zones covered by close circuit television equipment installed for crime prevention purposes.

COMPLAINTS

Complaints received during the year included one regarding the format of an individual's address as displayed in the Guernsey Telecoms (GT) published telephone directory. This was resolved following our approach to GT.

Further allegations were made concerning the misuse of personal data gathered by an Island based organisation involved in a joint venture with a UK based body. However these allegations were not substantiated.

A further complaint concerned the fair obtaining of personal data gathered through an on-line public petition. Enquiries revealed that extensive disclosures of the data had not been made. Advice was provided on the need for privacy statements on websites explaining the uses and disclosures to which petitioners' details may be put.

The forced disclosure of personal data to ICANN, a body associated with the registration of internet domain names was also brought to our attention. This is an international matter which is only likely to be resolved through high level European action.

An individual contacted the office after he discovered that his ex-employer held a CD that contained some of his personal details. Following intervention by the Commissioner the data were destroyed.

The Commissioner was contacted by the French data protection agency (CNIL) over an allegation that an individual had received unsolicited e-mail "spam" from an organisation which had its registered office in Guernsey. Investigation revealed that the spam was not emanating from Guernsey, but the information provided to the CNIL assisted in the process of forcing the organisation to cease issuing the spam.

OBJECTIVES FOR 2002

Legislation

Once the new Law has received Royal Assent it will be necessary to develop the Statutory Instruments needed to bring it into force in 2002.

The impact of the European Commission Directive on Data Protection in Telecommunications will need to be considered in the context of local legislation.

Resources and Staffing

A replacement for the Assistant Commissioner will need to be appointed and the staffing levels kept under review in the light of the volume of work needed.

New Premises

As a further demonstration of the independence of the Commissioner, the office will relocate in January of 2002 from Sir Charles Frossard House, the States of Guernsey's administrative centre, to self-contained premises in the heart of St. Peter Port.

This will provide a convenient location for meetings with most private sector organisations or for visiting them at their premises. Equally importantly, it offers a central town based point of contact for the general public, which is separate from any States Offices to ensure confidentiality.

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Website www.dataprotection.gov.gg

Raising Awareness

The media awareness campaign will need to be continued in order to promote the new Law to business, the public sector and the general public. Further development of the website will take place to include on-line notification and access to the register.

External Liaison

Further work will be needed on obtaining an adequacy declaration from the European Commission.

Significant effort is anticipated in respect of the organisation of the 24th International Conference in Cardiff.

Closer links need to be forged with European and International Commissioners.

REGISTRATION STATISTICS

It is a requirement of current legislation for organisations that process personal data to register on a three yearly basis, with the Commissioner. A list of the organisations that have registered is available for inspection at the Greffe in Guernsey, the States Office in Alderney and the S n schal's office in Sark.

The chart shows that of the 436 original registrations under the Law in 1987, 228 remained current in 2001. There was a gradual increase in registrations up to 1998 when the appointment of the first Commissioner designate resulted in a significant increase in the rate of registration.

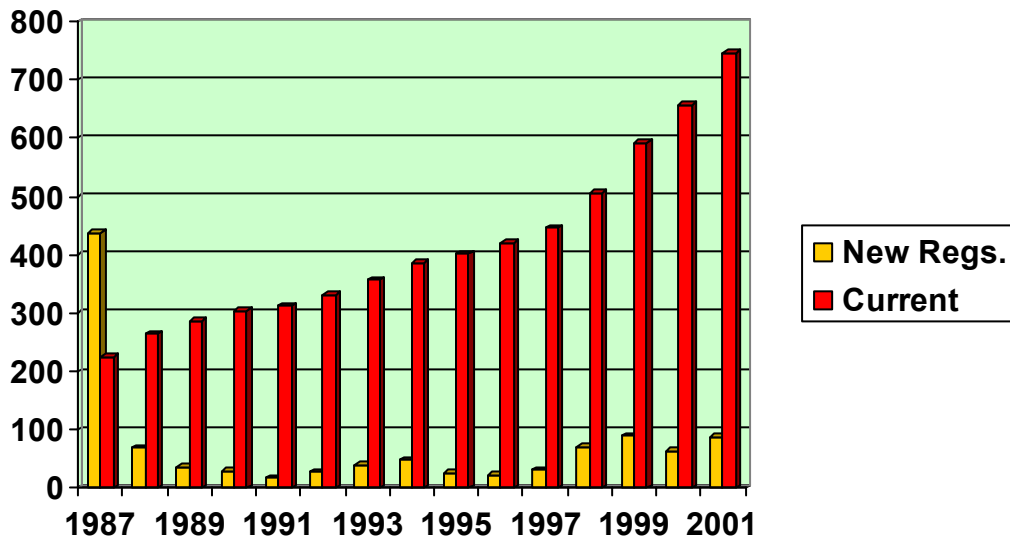


CHART OF CURRENT REGISTRATIONS
Date of first registration

The new Law provides for a similar process of notification on an annual basis, but organisations will not normally be required to notify until their current three year registrations expire. Following the implementation of the on-line notification system, it is intended that the register will be available on the Internet.

FINANCIAL REPORT

In 2001, the Data Protection Office was funded directly by the Advisory and Finance Committee and all fees received were paid into the General Revenue Account.

The Data Protection Office's Income and Expenditure, which was included within the accounts for the Advisory and Finance Committee, was as follows:

<u>INCOME</u>	2001	2000
	£	£
Data Protection Fees ¹	16,950	12,634
 <u>EXPENDITURE</u>		
Rent	18,150	-
Salaries and Allowances	69,458	24,070
Travel and Subsistence	5,099	3,432
Furniture and Equipment	23,838	9
Publications	<u>2,176</u>	<u>1,432</u>
	<u>£118,721</u>	<u>£28,943</u>

¹Fees are £75 for a new registration or to renew an existing registration for a three year period, with a lower fee being charged for a major update to an existing registration.

The Fee Income shown above is on a cash received basis.