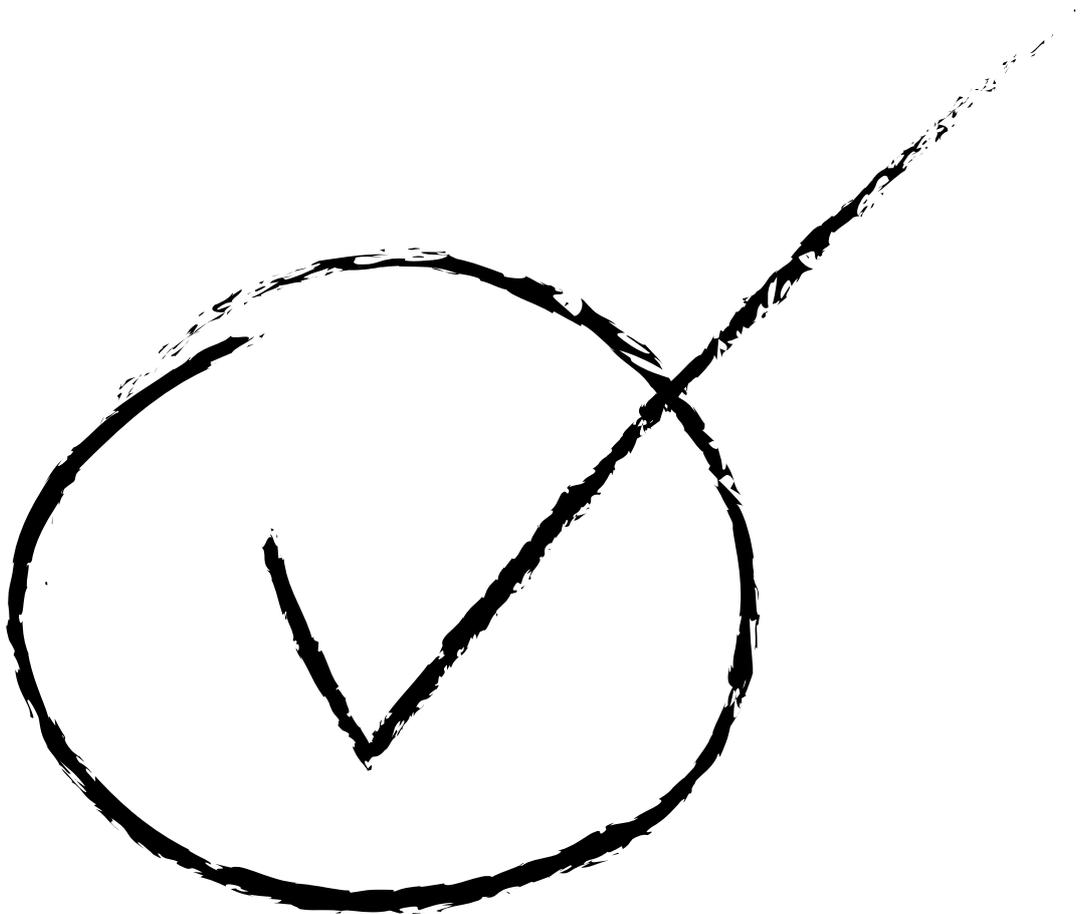


GUIDANCE:
**Registration and Levy Duties –
Regulatory Approach Summary**



Registration and Levy Duties – Regulatory Approach Summary

The Law

The Data Protection (Bailiwick of Guernsey) Law, 2017 and associated statutory instruments creates a legal requirement for controllers and processors to register with the ODPDA and pay an annual levy.

This payment allows the ODPDA to function effectively as an independent regulatory body for the Bailiwick.

General Principle

The ODPDA aims to support the regulated community's compliance with the Law through a comprehensive programme of education, support and guidance, recognising that for some organisations complying with the Law's requirements will be new to them.

For those who deliberately and knowingly ignore their legal obligations, however, the ODPDA is clear that appropriate action will be taken.

Overview

A fees regime has been in place since January 2021 for all controllers and processors established in the Bailiwick that use people's personal data.

For many of these entities little changed from the pre-2021 regime; if anything, the process for those registered pre-2021 is more straightforward.

Since July 2020, the ODPDA has engaged in a comprehensive programme of education, awareness and support for the entire community. Using a range of communication channels, it is working to ensure information about the post-2021 fees regime and associated registration requirements, is widely available, understood and shared.

Aiming for compliance with the registration and levy payment requirements through positive engagement and awareness is the objective. The ODPDA is also clear about how it approaches deliberate non-compliance.

The following sets out the approach to regulatory activity around registration and the payment of levies, supporting the [Strategic Plan](#).

Ensuring compliance

All controllers and processors established in the Bailiwick are required to complete the registration process on an annual basis, during January and February.

Controllers and processors using an [ODPA Levy Collection Agent \(LCA\)](#) do not need to administer a registration with the ODPa directly. The LCA route has also assisted in clarifying and facilitating the registration and levy payment requirements for those controllers and processors (such as administered entities) who may not have registered pre-2021.

Awareness, education and support programme

The ODPa has a comprehensive programme of awareness, education and support in operation.

This includes, but is not limited to:

- All the [guidance and resources available here](#).
- Proactive and sustained direct communication with ~60 Groups & Associations.
- Free [drop-in sessions](#) increased from fortnightly, from fortnightly, to weekly during each year's registration period (Jan-Feb)
- Ongoing PR
- Ongoing [social media](#) content
- Speaking engagements with key groups/organisations
- Engagement with: States of Guernsey Communication Team and [Guernsey Registry](#)
- Running [free events](#)
- Working in partnership with [The Digital Greenhouse](#) and [Guernsey Chamber of Commerce](#)

Aims of awareness programme

The awareness, education and support efforts described above are specifically designed to assist the regulated community to:

- be **aware** of the ODPa's funding model and how it affects them
- be **aware** that the Law applies to them even if they are a smaller business
- know what **action they need to take** regarding registration with the ODPa
- be **positively engaged** in meeting their legal obligations under local data protection legislation
- be **aware** of the ODPa's role as an independent regulator
- **understand** why the Bailiwick must retain its 'adequacy' decision from the European Commission and the part that industry funding plays in safeguarding it
- **know** that they are supported in delivering on their administrative obligations.

Conscious non-compliance

There may be some individuals or organisations that make a conscious decision not to comply. In such cases, the ODPa is clear that appropriate action will be taken in accordance with the Law. Whilst using its limited resources in dealing with enforcement in this area diverts those resources from valuable compliance work around the processing of personal data, it also recognises that ensuring a stable and workable funding regime is crucial. So too is ensuring that it approaches its duties in respect of compliance issues in a fair and consistent manner.

Identifying controllers and processors who are not registered

The ODPa aims to focus its resources on areas that directly influence and improve standards of data handling practices and will seek to identify controllers/processors who fail to comply with the registration requirements.

If it becomes aware of a controller/processor that is not registered, the following may apply:

- Where a controller/processor is not registered an ODPa case officer will make contact.
- Where a controller/processor indicates that they are registered with an LCA, the case officer will request sight of their Certificate of Exemption (which their LCA should have provided to them).
- Where a controller/processor is not responsive or cannot produce evidence of a Certificate of Exemption issued by an LCA, a follow up communication will be sent.
- Where a controller/processor is not responsive, a final reminder letter will be sent.
- Where a controller/processor is not responsive, there will be consideration of further action.

That further action could be any, or all, of the following:

- recommend prosecution;
- conduct an investigation or inquiry into whether there has been a breach of an operative provision;
- seek civil debt recovery (via Petty Debts).

Making a determination of non-compliance following a section 68 investigation or section 69 inquiry

Where a section 68¹ or section 69² breach determination is made which relates to matters other than registration duties, the following will be considered –

¹ **section 68** = the section of *The Data Protection (Bailiwick of Guernsey) Law, 2017* that gives the Authority powers to investigate a controller/processor as a result of a complaint made about the controller/processor.

² **section 69** = the section of *The Data Protection (Bailiwick of Guernsey) Law, 2017* that gives the Authority powers to launch its own inquiry into a controller/processor's use of personal data.

- Whether it may be appropriate to include the failure to register in that determination
- Whether it may be appropriate to include a specific sanction for the failure to register

Administrative fines

Where a section 68 investigation or a section 69 inquiry is conducted and a breach determination issued, consideration will be given to an appropriate sanction. Where that sanction is an administrative fine, the following will be considered –

- The financial loss to the ODPA of the controller/processor failing to register
- The need for a proportionate but effective deterrent

Review

The ODPA recognises the need to ensure clarity around the statutory duties and associated sanctions for all controllers/processors. Failing to deal with non-compliance consistently, fairly and visibly heightens the risk of non-compliance by others.

During the first two years of this regime (2021 and 2022), there was a focus on engaging and supporting the regulated community and taking a pragmatic and constructive approach to areas of non-compliance where they relate to registration matters.

Now that the fees regime has bedded in the ODPA hopes that cases of wilful non-compliance are very low but will deal proactively with any such cases.
