



## The Data Protection (Bailiwick of Guernsey) Law, 2017 ("the Law")

### Exemptions Outlined in Schedule 8 of the Law

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## Introduction

The Data Protection (Bailiwick of Guernsey) Law, 2017 provides individuals with a number of rights they can exercise about how and why their personal data is processed. These rights apply generally across all personal data processed, embodying the concept of '**human at the heart**'. However, those processing personal data may, on occasions, encounter circumstances where it is not appropriate or possible to comply with these rights, usually due to the nature of the personal data or purpose of the processing. To assist in those **limited circumstances**, the Law outlines a number of exemptions, that remove the requirements in relation to data subject rights.

Regardless of the specific exemption, certain key things need to be borne in mind and as such are listed below :-

- Exemptions should be applied **narrowly**, to specific personal data in specific circumstances. There should be no 'blanket' application of exemptions. Consideration should be on a case-by-case basis taking into account the type of personal data, the purpose of the processing and any adverse impact of the application of the exemption on the data subject.
- There are very few exemptions that absolutely must be applied in the circumstances described (paragraph 16A – Disclosures prohibited or restricted by enactments & 16D Serious harm to data subjects or other individuals) and even then only in certain circumstances. As such, it is entirely possible that an exemption could be applied to the personal data but that the controller decides it does not wish to rely on that in the circumstances and will handle any rights request as if none applied, and in the spirit of the Law.
- Exemptions should be carefully considered and their use fully justified. In accordance with the **accountability requirements** of the Law and the expectations of the Authority, all decisions to rely on an exemption should be documented and controllers should be prepared to share that documentation with the Authority should they be asked.

These exemptions are listed in Schedule 8 of the Law and are covered in this guidance together with advice as to how and when to apply these exemptions. Exemptions are referred to in this guidance by the paragraph number and title from Schedule 8. This allows for cross-referencing with the Law itself.

[Practical steps](#) to take when assessing the application of exemptions can be found towards the end of this document.

## **Part I - Exemptions from Part III of this Law based on nature of personal data**

For the purposes of the exemptions within this part of the Law, a **provision of Part III** is defined as any provision of part III of the Law and any provision of section 6 of the Law corresponding to a right or duty under Part III of the Law.

### **1. Confidential references given by the controller.**

Where a reference **is given (or is to be given)** by a controller for any of the following purposes it is exempt from any of the provisions of Part III of the Law (see above for further details).

The purposes are :-

- (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.

It is important to note that this exemption is **only available** to the controller that gave or is to give the reference, most usually the existing employer or the referees as given by the data subject. The controller that receives the reference cannot make use of this exemption and should consider it as it would any other personal data to which a data subject rights request applies.

### **2. Judicial appointments and honours.**

Personal data is exempt from a provision of Part III where it is **processed solely** for either of the following purposes –

- (a) assessing any person's suitability for judicial office or the office of Queen's Counsel,
- (b) the conferring by the Crown of any honour or dignity.

#### **2A. Crown appointments.**

Personal data is exempt from a provision of Part III if **processed solely** for the purpose of assessing any person's suitability for any of the following offices –

- (a) Lieutenant Governor,
- (b) Dean of Guernsey,
- (c) Her Majesty's Procureur,
- (d) Her Majesty's Comptroller, or
- (e) Her Majesty's Receiver General.

Therefore, if a data subject rights request was made by any of the applicants or candidates for the above appointments during the selection phase, the personal data processed in order to judge suitability would be exempt from that request.

However, once a decision was made and that personal data was processed for any other purpose, for example, by the human resources department, the exemption would no longer apply and the personal data must be treated as any other personal data would be.

## **2B. Disclosure to relevant bodies to protect individuals from serious harm.**

Where it is felt that someone is at risk of serious harm, whether that be the person the data is about (the 'data subject') or a third party, this exemption allows for the personal data to be provided to any relevant body with a function or objective of **protecting people from serious harm**, where a provision of Part III of the Law would usually prevent or restrict such a disclosure.

It must be noted that this exemption **only applies** where disclosure is needed in efforts to prevent serious harm and even then, only where the provision of Part III would stop or impact adversely on that disclosure. It does not exempt the controller from responding to data subject rights requests made in other circumstances.

## **2C. Disclosure required by law, etc.**

The disclosure of personal data to any person is exempt from a provision of Part III that prohibits or restricts such a disclosure, to the extent that the disclosure is necessary –

- (a) to comply with a duty imposed –
  - (i) by or under any enactment,
  - (ii) by any rule of law, or
  - (iii) by the order of a court or tribunal, or
- (b) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),
- (c) for the purpose of obtaining legal advice, or
- (d) otherwise for the purposes of establishing, exercising or defending legal rights.

This exemption can **only** be relied upon in circumstances where Part III of the Law would **prevent or restrict a disclosure** deemed necessary for the above listed purposes. This means this exemption is more limited than many others and should be considered carefully before being relied upon.

### 3. Examination data.

Personal data is exempt from a provision of Part III if **recorded by any candidate** during an examination.

This means that candidates cannot make a data subject rights request in relation to their exam script.

However, data subject rights requests made relating to the marks or other comments made by the exam marker or the examinations body would need to be complied with.

Furthermore, given the structured publication of exam data, attention is drawn to the following exemption that provides different timescales for response than would usually be the case.

### 4. Marking data.

Where a request under Part III of the Law is made for or in relation to marking data, this exemption **alters the timescale** in which a response should be provided, in order to avoid someone receiving their marking data before the scheduled 'Results Day' publication.

If the request is received **after the publication** of exam results (publication includes making them available to, or communicating them to, candidates) the usual timescale for response of one month applies.

If the request is received **before the publication** of the exam results, the timescale for response is altered to the earlier of either :-

- five months from the day after receipt
- or
- two months after the publication date.

### 5. Privileged items.

Privileged items are exempt from a provision of Part III.

For the purposes of this Law, '**privileged items**' is defined as :-

- (a) items subject to legal professional privilege, within the meaning given by section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 , and
- (b) any communication between a professional legal adviser and the adviser's client in connection with the giving of legal advice to the client with respect to the client's

duties, liabilities or rights under the Data Protection (Bailiwick of Guernsey) Law, 2017.

## **Part II - Exemptions from designated provisions on grounds of prejudice**

For the purposes of the exemptions within this part of the Law, a **designated provision** is any of the following :-

- (a) any provision of Part III of this Law (data subject rights)
- (b) any provision of section 6 of this Law corresponding to a right or duty in Part III of this Law or
- (c) section 43 of this Law (notification of a data breach to an affected data subject).

It is important to remember that for exemptions within this part of Schedule 8 of the Law, it is not simply enough for the exemption to be engaged. In order to rely on the exemption and not comply in full with a designated provision, it is **necessary to demonstrate** that the purpose of processing that personal data would likely be **prejudiced** (e.g. to do so would have a damaging or detrimental effect on what is being done) if the designated provision was complied with. It is expected that, where one of these exemptions is relied upon, the decision making will be documented and that that record is capable of being provided to the Authority should it be requested.

Further, exemptions should be **applied narrowly** and on a **case-by-case basis**. Just because the exemption applies appropriately and prejudice can be demonstrated in relation to one piece of personal data does not mean that the designated provision is not to be complied with for any other personal data.

### **6. Armed forces.**

Personal data is exempt from a designated provision **to the extent** that the application of the provision to the data would be likely to **prejudice** the combat effectiveness of any of the armed forces of the Crown.

### **7. Management forecasting or planning.**

Personal data processed for a management forecasting or management planning activity is exempt from a designated provision **only to the extent** that complying with designated provision would **prejudice** the conduct of that business or any other related activity. As this is a prejudice-based exemption, it is necessary to demonstrate that compliance would likely prejudice those activities, for example, that revealing plans to one staff member before any others would unduly hamper a planned workforce restructuring.

It is important to understand that whilst this exemption may be appropriately engaged at one point in time, it does not always mean that it will be, and that when the activity that would be prejudiced has concluded the ability to rely on this exemption will likely fall away.



Therefore, whilst withholding limited personal data about a change in job roles may have been appropriate prior to a restructuring, once that restructuring has taken place the prejudice no longer exists and the exemption can no longer be relied upon.

Supplementary guidance can be found in [Appendix 1](#).

## **8. Financial service data.**

For the purposes of this exemption, the following definitions apply –

**‘corporate finance service’** means a service consisting of –

- (a) underwriting in respect of issues of, or the placing of issues of, any instrument,
- (b) services relating to such underwriting, or
- (c) advice to undertakings on capital structure, industrial strategy and related matters or advice or service relating to mergers or the purchase of undertakings,

**‘financial service data’** means personal data that is processed for the purpose of, or in connection with, a corporate finance service provided by a relevant person,

**‘instrument’** means any instrument listed in section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, and a reference to ‘any instrument’ includes a reference to an instrument not yet in existence but which is to be or may be created,

**‘price’** includes value,

**‘relevant person’** means –

- (a) any person who holds a licence to carry on controlled investment business under Part I of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 or is an exempted person under Part IV of that Law,
- (b) any person who, by reason of a permission under Part 4A of the Financial Services and Markets Act 2000 (‘that Act’), is able to carry on a corporate finance service without contravening the general prohibition within the meaning of section 19 of that Act (‘that general prohibition’),
- (c) an EEA firm of the kind mentioned in paragraph 5(a) or (b) of Schedule 3 to that Act which has qualified for authorisation under paragraph 12 of that schedule, and may lawfully carry on a corporate finance service,
- (d) a person who is exempt from that general prohibition in respect of any corporate finance service –
  - (i) as a result of an exemption order made under section 38(1) of that Act, or

- (ii) by reason of section 39(1) of that Act (appointed representatives),
- (e) any person, not falling within paragraph (b), (c) or (d) who may lawfully carry on a corporate finance service in the United Kingdom,
- (f) any person who, in the course of employment, provides to their employer a service falling within paragraph (b) or (c) of the definition of ‘corporate finance service’, or
- (g) any partner who provides to other partners in the partnership a service falling within paragraph (b) or (c) of the definition of ‘corporate finance service’.

This exemption applies where **one of two** conditions (A or B – see below) is satisfied exempting the relevant financial services data from the designated provision. These are **relatively narrow** conditions and it is necessary to **demonstrate the prejudice** that would likely be caused if the designated provision is complied with in relation to that financial services data. If relying on the exemption on the basis of reasonable belief it will be necessary to document that belief and the circumstances that mean that belief is reasonable.

**Condition A** is that the application of the provision to the data would be likely to affect the price of any instrument, or the controller reasonably believes that to be the case.

**Condition B** is that -

- (a) the relevant person reasonably believes that the application of the provision to the personal data in question could affect a decision of any person –
  - (i) whether to deal in, subscribe for or issue any instrument, or
  - (ii) to act (or not to act) in a way likely to have an effect on a business activity (such as an effect on the industrial strategy of a person, the capital structure of an undertaking or the legal or beneficial ownership of a business or asset), and
- (b) the application of the provision to that personal data would be likely to prejudice –
  - (i) the orderly functioning of financial markets or the efficient allocation of capital within the economy, or
  - (ii) any other important financial or economic interest of the Bailiwick.

Supplementary guidance can be found in [Appendix 2](#).

## 9. Negotiations.

This exemption applies to any **negotiation record** (a record of the intentions of the controller in relation to any negotiations with the data subject) to the extent that the designated provision would be likely to **prejudice those negotiations**. Therefore, whilst

involved in negotiations with a data subject the tactics for negotiation, including any maximum level the controller envisaged would not need to be provided in the event that a subject access request was made by the data subject.

It is important to understand that whilst this exemption may be appropriately engaged at one point in time, it does not always mean that it will be, and that when the negotiations that would be prejudiced has concluded the ability to rely on this exemption will likely fall away.

## **10. Self-incrimination.**

In circumstances where the application of a designated provision would be likely to result in the exposure of the controller to proceedings by revealing evidence of the commission of an offence, this exemption would remove the requirement to comply with the designated provision. This is limited **only** to information that would be likely to expose that offence and the decision making should be documented.

This exemption **cannot be relied upon** if the offence is any of the following :-

- (a) an offence under this Law,
- (b) perjury, or
- (c) perverting the course of justice.

## **11. Judicial independence and judicial proceedings.**

Personal data is exempt from a designated provision to the extent that the application of the provision to the data would be likely to **prejudice** judicial independence or the conduct of judicial proceedings.

## **12. Public information.**

In this context, '**public information**' includes information the controller is required to publish by law and information held on a public register. '**Publish**' means to make information available to the public or any section of the public in any form, whether free of charge or for a fee.

This exemption removes the requirement to comply with **sections 12 and 13** of the Law (duty to give information to a data subject) or any designated provision corresponding with those sections for public information. There is no requirement to demonstrate prejudice in these circumstances.

Further, where complying with another designated provision would be likely to **prejudice** the purpose for processing the public information this exemption can be relied upon to the extent required to prevent that prejudice. It will be **necessary to demonstrate** and document the likely prejudice **if relying on this exemption** for designated provisions other than section 12 and 13.

### **13. Historical or scientific information.**

In this context personal data is processed for a **‘historical or scientific purpose’** if it is processed for the purpose of archiving in the public interest; a scientific or historical research purpose ; or a statistical purpose. Personal data is **not** processed for a historical or scientific purpose if it is processed in order to make a decision, or to allow a decision to be made, about a particular data subject or if substantial damage is, or is likely to be, caused to any data subject. Where the data processed is **special category data** this should be borne in mind when assessing damage.

If complying with a designated provision will be likely to **prejudice** the historical or scientific purpose for which the personal data is processed this exemption can be engaged. It is necessary to be able to **demonstrate** the prejudice that will occur should the designated provision be complied with in order to rely on this exemption.

### **14. Tax and crime information.**

This exemption applies to personal data processed for a **law enforcement purpose** or for the **assessment or collection of any tax**, duty or similar imposition, within or outside the Bailiwick, including any interest or penalty resulting from late payment or non-payment.

In this context, **‘law enforcement purpose’** means the prevention, investigation, detection or prosecution of a criminal offence within or outside the Bailiwick; the execution of criminal penalties within or outside the Bailiwick; safeguarding against or preventing threats to public security or national security; or exercising or performing any power or duty conferred or imposed on a public authority by a criminal proceeds enactment.

This exemption can be relied upon where the purpose of processing (law enforcement purpose or tax-related) would be prejudiced by the designated provision. This applies **only** to the extent of that **prejudice** and should be considered on a **case-by-case basis**, with the decision making process being documented. This **does not** remove the need to identify a lawful processing condition in accordance with section 7 of the Law.

Where a public authority is operating a risk assessment system for either a law enforcement or tax-related purpose, that processing is exempt from a designated provision to the extent necessary to address any prejudice that may be caused by complying with that provision. As

above, this **does not** remove the need to identify a lawful processing condition in accordance with section 7 of the Law and the decision making should be documented.

It is important to understand that whilst this exemption may be appropriately engaged at one point in time, it does not always mean that it will be, and that when the activity that would be prejudiced has concluded the ability to rely on this exemption may fall away.

#### **14A. Prejudice to international obligations, etc.**

Personal data is exempt from a designated provision (other than the need to identify a lawful processing condition) **only** to the extent that the application of the provision to the personal data would be likely to –

- (a) breach an international obligation of the Bailiwick, or
- (b) prejudice the ability of the Bailiwick to meet its international obligations.

#### **15. Protective functions.**

For the purposes of this exemption, a ‘**protective function**’ is any of the following :-

- (a) the protection of 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, fiduciary, trustee services or other financial services or in the establishment or management of any body corporate, limited partnership with legal personality or foundation,
  - (ii) financial loss due to the conduct of a person that is bankrupt or otherwise insolvent,
  - (iii) dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorised to carry on any profession or other activity,
  - (iv) maladministration by any public authority,
  - (v) failure in the services provided by any public authority, or
  - (vi) a failure of a public authority to provide a service which it is a function of the public authority to provide,
- (b) the protection of non-profit organisations or charities against misconduct or mismanagement (whether by trustees, directors or other persons) in their administration,
- (c) the protection of the property of non-profit organisations or charities from loss or misapplication,
- (d) the recovery of the property of non-profit organisations or charities,
- (e) the securing of the health, safety and welfare of persons at work,

- (f) the protection of persons other than those at work against risk to health or safety arising out of or in connection with the action of persons at work, or
- (g) the protection of the reputation and standing of the Bailiwick.
- (h) a power or duty conferred or imposed on a person by a criminal proceeds enactment

This exemption applies to personal data processed in the discharge of a protective function that –

- (a) is conferred or imposed by an enactment on any person,
- (b) is a function of the Crown, a Law Officer of the Crown, the States or a public committee, or
- (c) is of a public nature and is exercised in the public interest.

Personal data is exempt from a designated provision **only** to the extent that the application of the provision to the personal data would be likely to prejudice the proper discharge of the protective function. Therefore, to rely on this exemption it will be necessary to **demonstrate** the nature of the protective function, that it meets the criteria for a protective function and the **prejudice** that will adversely impact the discharge of that protective function. The decision making process should be documented.

It is important to understand that whilst this exemption may be appropriately engaged at one point in time, it does not always mean that it will be, and that when the activity that would be prejudiced has concluded the ability to rely on this exemption may fall away.

## 16. Regulatory purposes.

For the purposes of this exemption, the term **‘regulatory purpose’** means the prevention, investigation, detection, determination or punishment of an administrative offence; the carrying out of the measures imposed as a punishment for an administrative offence or the determination by a public authority of an application for a registration, licence, approval or any other kind of authorisation or consent, in accordance with an enactment.

**‘Administrative offence’** means any offence, breach or other transgression (which may include a disciplinary offence) punishable by any measures under and in accordance with any enactment, other than by way of criminal proceedings.

Personal data is exempt from a designated provision **only** to the extent that the application of the provision to the personal data would be likely to **prejudice** the regulatory purpose. Therefore, to rely on this exemption it will be necessary to **demonstrate** the nature of the protective function, that it meets the criteria for a protective function and the prejudice that will adversely impact the discharge of that protective function. The decision making process should be documented.

It is important to understand that whilst this exemption may be appropriately engaged at one point in time, it does not always mean that it will be, and that when the activity that would be prejudiced has concluded the ability to rely on this exemption may fall away.

## **Part IIA - Other exemptions and exceptions in relation to designated provisions**

For the purposes of the exemptions within this part of the Law, a **designated provision** is any of the following :-

- (a) any provision of Part III of this Law (data subject rights)
- (b) any provision of section 6 of this Law corresponding to a right or duty in Part III of this Law or
- (c) section 43 of this Law (notification of a data breach to an affected data subject).

### **16A. Disclosures prohibited or restricted by enactments.**

For these purposes, '**an enactment**' is a Law, an Ordinance and any subordinate legislation with effect in the Bailiwick, or any part of the Bailiwick, and includes any Acts of Parliament from the UK (or any part thereof) that extends to the Bailiwick.

Where an enactment, or a part of an enactment, **specifically prevents** the disclosure of personal data this exemption can be relied upon for not disclosing that personal data as may usually be required by a designated provision.

Whilst the exemption has been drafted to encompass all enactments meeting the above definition, the following are specifically mentioned as enactments to which this exemption will apply :-

- sections 17, 20A and 20B of the Adoption (Guernsey) Law, 1960, and
- sections 17, 20A and 20B of the Adoption (Guernsey) Law, 1960, as extended to Alderney by the Alderney (Application of Legislation) (Adoption) Ordinance, 1974.

It is important to ensure that the exemption is applied **narrowly** and to remember that it may not cover all the personal data subject to the designated provision in question.

### **16B. Trusts exemption.**

Personal data in respect of a trust is exempt from a designated provision (other than section 24 of this Law- the right not to be subject to decisions based on automated processing) **only** to the extent that –

- (a) in the case of a trust governed by Guernsey law, the personal data consists of information the withholding of which by the relevant controller is **authorised** by section 38 of the Trusts (Guernsey) Law, 2007 or the disclosure of which by the relevant controller would be **contrary** to a prohibition or restriction under any rule of law, whether statutory or customary, of Guernsey,



- (b) in the case of a trust governed by Alderney or Sark law, the personal data consists of information the disclosure of which by the relevant controller would be **contrary** to a prohibition or restriction under any rule of law, whether statutory or customary, of Alderney or (as the case may be) Sark, or
- (c) in the case of a trust governed by the law of a country outside the Bailiwick, the personal data consists of information the withholding of which by the relevant controller is **authorised** by or under the law of that country or the disclosure of which by the relevant controller would be **contrary** to a prohibition or restriction under the law of that country.

It is important to ensure that the exemption is applied **narrowly** and to remember that it may not cover all the personal data subject to the designated provision in question.

### **16C. Court-directed exemptions.**

For the purposes of this exemption, the term ‘**tribunal**’ means an office-holder or a body of persons that judges, adjudicates on or otherwise determines claims, disputes or other contentious matters following legal proceedings. This is distinct from a **court**, that has the usual meaning.

Where a court or a tribunal has **directed** that personal data should be **withheld** from a data subject, this exemption enables that direction to be complied with, should this conflict with any designated provision. Therefore, if a court or tribunal has said personal data should not be provided to the data subject, the designated provisions do not override that direction.

For this exemption to be able to be relied upon the personal data **must** have been processed by a court or tribunal, having been supplied in a report or other evidence given to the court or tribunal in the course of legal proceedings by or on behalf of any of the following :-

- (i) a probation officer,
- (ii) a health professional,
- (iii) an educational establishment,
- (iv) a public committee, or
- (v) any other person or body

Most importantly, the court or tribunal **must** have provided **direction** that the personal data must be **withheld** from the data subject on the ground that it appears to be either –

- (i) impracticable to disclose the report or other evidence to the data subject having regard to the age and understanding of the data subject, or
- (ii) undesirable to do so having regard to potential serious harm which might be suffered by the data subject as a result of such disclosure.

This exemption is not engaged simply because the personal data has been heard in or provided to a court or tribunal. It is imperative that a direction to withhold from the data subject has been given and relates to the personal data in question.

#### **16D. Serious harm to data subjects or other individuals.**

For the purposes of this exemption, the following definitions apply –

**‘Educational data’** means any personal data which –

- (a) is processed by or on behalf of the proprietor of, or a teacher at, a school,
- (b) relates to any person who is or has been a pupil at the school, and
- (c) originates from or is supplied by or on behalf of –
  - (i) a teacher or other employee at the school,
  - (ii) an individual engaged by the proprietor of the school or working at a school under a contract for the provision of educational services,
  - (iii) the pupil to whom the data relates, or
  - (iv) a parent of that pupil.

**‘Health data’** has the meaning given in section 111 of the Law – personal data relating to the health of an individual, including the provision of health care services, which reveals information about the individual’s health status.

**‘Social assistance data’** means personal data –

- (a) processed by the States of Guernsey Committee for Employment & Social Security or any other person in connection with the allocation of housing or other residential accommodation,
- (b) processed by the States of Guernsey Committee for Employment & Social Security in connection with the payment of income support under the Income Support (Guernsey) Law, 1971, or
- (c) processed by the States of Guernsey Committee for Health & Social Care in connection with the carrying out of its functions under the States Children Board and Public Assistance (Amendment) (Guernsey) Law, 1970.

**‘Appropriate health professional’** means –

- (a) the health professional who is currently or was most recently responsible for the clinical care of the data subject in connection with the matters to which the health data relates,
- (b) where there is more than one such health professional, the health professional who is the most suitable to advise on the matters to which the health data relates, or
- (c) where –
  - (i) there is no health professional available falling within item (a) or (b), or

- (ii) the controller is the States of Guernsey Committee for Employment and Social Security and the health data is processed in connection with the exercise of the functions conferred on the committee by or under the Social Insurance (Guernsey) Law, 1978, the Health Service (Benefit) (Guernsey) Law, 1990 or any other of its functions in relation to social or health protection, a health professional who has the necessary experience and qualifications to advise on the matters to which the health data relates.

**‘Non-health controller’** means any controller who is not a health professional.

This exemption has two parts. Firstly, it can be relied upon by those processing educational data, health data or social assistance data where to comply with a designated provision would be **likely to cause serious harm** to either the data subject **or** another individual. In such circumstances it would be possible not to comply with the designated provision to the extent **necessary** to protect from that harm. This may mean only some of the personal data can fall within this exemption and it must be clear what does and what does not. It will be necessary to document the perceived harm and the deliberation that led to the decision that to comply with the designated provision would be likely to cause harm.

Where the personal data is health data and the controller is a non-health controller, that is to say not a health professional, this exemption stipulates that **no data** should be given or no action taken in relation to that health data and a designated provision **unless** the controller has consulted with the appropriate health professional to ascertain whether there is a likelihood of serious harm. This is so that an **informed** decision can be made about whether or not to rely on this exemption.

The requirement for a non-health controller to consult the appropriate health professional can be disregarded if either of the two conditions below can be satisfied.

- i. The non-health controller is aware that the health data has previously been seen by, or is already within the knowledge of, the data subject, in which case the information can be provided or the action taken  
or
- ii. Within the period of six months before the non-health controller gives the person the information, or takes the action, the appropriate health professional has given the controller an opinion to the effect that the exemption applies or does not apply in respect of the health data. If the exemption applies there is no requirement to provide the health data or take the action. If the exemption does not apply it should be handled as normal.

## **16E. Requests by persons with parental responsibility or court-appointed administrators.**

For the purposes of this exemption, the following definitions apply –

**‘Child abuse’** includes –

- (a) physical injury (other than accidental injury) to a child,
- (b) physical or emotional neglect of a child,
- (c) ill-treatment of a child, or
- (d) sexual abuse of a child.

**‘Health data’** has the meaning given in section 111 of the Law – personal data relating to the health of an individual, including the provision of health care services, which reveals information about the individual’s health status.

**‘Social assistance data’** means personal data –

- (a) processed by the States of Guernsey Committee for Employment & Social Security or any other person in connection with the allocation of housing or other residential accommodation,
- (b) processed by the States of Guernsey Committee for Employment & Social Security in connection with the payment of income support under the Income Support (Guernsey) Law, 1971, or
- (c) processed by the States of Guernsey Committee for Health & Social Care in connection with the carrying out of its functions under the States Children Board and Public Assistance (Amendment) (Guernsey) Law, 1970.

This exemption applies where a person makes a request under a provision of Part III of the Law **on behalf of** a data subject, where the data subject is a **child** and the person making the request has **parental responsibility** or if the data subject is incapable of managing their own affairs and the person making the request has been **appointed by a court** to manage those affairs, for example as a legal guardian.

Personal data relating to whether the data subject is or has been the subject of child abuse or may be at risk of child abuse is exempt from a designated provision to the extent that the application of the provision to the personal data **would not be in the best interests of the data subject**.

Health data or social assistance data relating to the data subject is exempt from a designated provision to the extent that the application of the provision to the health data would disclose information –

- (a) provided by the data subject in the **expectation** that it would not be disclosed to the person making the request,
- (b) 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
- (c) which the data subject has **expressly indicated** should not be so disclosed.

In relation to points (b) and (c) above, where the data subject has **expressly indicated** that the data subject no longer has the expectation mentioned in those subparagraphs the exemption does not apply.

## Part III - Wider Exemptions in the Public Interest

### 17. Journalism, art, literature and academia.

For the purposes of this exemption '**freedom of expression and information**' means the right protected under article 10 of the European Convention on Human Rights and Fundamental Freedoms as incorporated in the Human Rights (Bailiwick of Guernsey) Law, 2000.

Personal data processed **only** for the purpose of journalism or an artistic, literary or academic purpose, is exempt from the provisions within the following Parts of the Law :-

|            |                                                                                               |
|------------|-----------------------------------------------------------------------------------------------|
| Part II    | Duties and Principles of Processing                                                           |
| Part III   | Data Subject Rights                                                                           |
| Part IV    | Duties of Controllers and Processors                                                          |
| Part VII   | Data Protection Impact Assessments and Prior Consultation                                     |
| Part IX    | Codes of Conduct and Certification Mechanisms                                                 |
| Part X     | Transfers to Unauthorised Jurisdictions                                                       |
| Part XI    | The Data Protection Authority                                                                 |
| Part XII   | Enforcement by the Authority                                                                  |
| Section 43 | Data subject to be notified [of a personal data breach] if high risk to significant interests |

This is **only** to the extent that –

- the processing is undertaken with a view to the publication by any person of any journalistic, artistic, literary or academic material,
- the application of the provision to the personal data would be likely to **prejudice** the purpose concerned in connection with the publication of that material, and
- it is **reasonably believed** that, having particular regard to the importance of freedom of expression and information, the **public interest** in the publication of that material outweighs the significant interests of the data subject.

### 18. Public security, etc.

Personal data is exempt from any provision of the following Parts of the Law II to XII or XV to the extent that the application of the provision ("exemptable provision") to the data would be likely to **prejudice** public security or national security.

|          |                                                           |
|----------|-----------------------------------------------------------|
| Part II  | Duties and Principles of Processing                       |
| Part III | Data Subject Rights                                       |
| Part IV  | Duties of Controllers and Processors                      |
| Part V   | Administrative Duties                                     |
| Part VI  | Security of Personal Data                                 |
| Part VII | Data Protection Impact Assessments and Prior Consultation |

|           |                                               |
|-----------|-----------------------------------------------|
| Part VIII | Data Protection Officers                      |
| Part IX   | Codes of Conduct and Certification Mechanisms |
| Part X    | Transfers to Unauthorised Jurisdictions       |
| Part XI   | The Data Protection Authority                 |
| Part XII  | Enforcement by the Authority                  |
| Part XV   | Offences and Criminal Proceedings             |

A certificate signed by Her Majesty's Procureur certifying that exemption from one or more exemptable provisions specified in the certificate is or at any time was required for the purposes of this exemption in respect of any personal data is conclusive evidence of that fact.

Any person directly affected by the issuing of a certificate in accordance with this exemption may appeal to the Royal Court against the certificate. The Law provides further details on how an appeal will be conducted and potential outcomes.

### **Practical steps to take when assessing application of exemption**

- Data subject right request received.
  - You should have a ratified policy and procedure for responding to communications from data subjects relating to data protection
  - Ensure your DPO is involved
  - Ensure **all steps are documented**
  - It is important to remember that very few exemptions absolutely must be applied so you may decide not to rely on one.
- Identify the personal data which is subject of the request
- Identify which exemption may be applicable
- Identify the specific personal data to which the exemption may be applicable
  - Not all of the personal data may be captured by the exemption
- Identify the **significant and weighty** prejudice
- Identify the likely consequences were the exemption not applied
- Consider why application of the exemption is proportionate in light of these likely consequences
- Consider whether there is a particular time sensitivity on some or all of the personal data in question.
- Where an exemption is to be relied on, apply the **minimum restriction necessary**.
- Provide as much information to the data subject as possible
- Note the accountability requirements in all decisions made. If questioned by the regulator (ODPA) the controller needs to be able to show the reasons for the exemption applying and the reasons for the decision to withhold any personal data as a result of that. It is for the controller to demonstrate decision making is robust and that the application of any exemptions has been done proportionately and reasonably with due basis.



## **Appendix 1 - Supplementary Guidance - Management Forecasting or Planning**

The purpose of this exemption is to avoid undue business disruption arising from the exercise of a data subject right, while an organisation or a business is actively carrying out management forecasting or management planning in order to assist the organisation or business carry out their activities.

A controller should not apply this exemption unless complying with a designated provision would result in a **very significant** and **weighty** chance of prejudice to the business or activity concerned (see the case of **R v Lord** [2003] EWHC 2073).

In order to assess the potential application of this exemption on a case-by-case basis, the controller needs to consider in the particular case:

- whether the restriction of a **specific** right is necessary;
- if so, whether the restriction of the right is necessary with respect to **the specific set of personal data** concerned; and
- if so, whether the restriction of that right is necessary at the **specific point in time**.

For example, it may be necessary to restrict the right of **access**, but not the right to **correction**, in relation to the specific set of personal data. In certain circumstances, revealing a specific job description compiled by the controller in order to plan possible redundancies as part of planned workforce restructuring may prematurely and needlessly cause employees to leave and disrupt management planning. But correcting a job description currently held by the controller alongside other job descriptions (to which all employees have access) might not disrupt management planning, and would, in fact, be useful to keep the description accurate and up-to-date.

Similarly, in certain circumstances restricting the right of access to the fact that a data subject's job has been **placed on a list of jobs that may be made redundant** might well result in prejudice to the conduct of the controller's business. But restricting the right of access to a **description of the data subject's job** compiled alongside job descriptions of all other employees might not disrupt management planning and the business concerned. Finally, at an early stage of the process of planning workforce restructuring, it might be necessary to restrict the right of access to certain personal data (e.g. a job description or list of potential redundancies). But at a **more advanced** stage of the process, for example when consultation on potential redundancies has already begun, it may no longer be necessary to restrict the right of access to that personal data.

In all cases, any restriction of the right concerned, must be the **minimum** necessary to avoid the risk of prejudice to the business or activity concerned, and must be **proportionate** to the likely impact of the potential prejudice on the business or activity concerned.

As with other exemptions, the controller should document any application of this exemption and the case-by-case assessment carried out by the controller and maintain such documentation to demonstrate accountability and in order to present to the Data Protection Authority should it be requested.

## **Appendix 2 - Supplementary Guidance - Financial Services Data**

The purpose of this exemption is generally to allow a controller to restrict data subject rights in relation to certain types of financial service data in limited circumstances, in order to avoid prejudice or an undesirable effect on financial or economic interests seen to be in the public interest.

It is important to note that the circumstances in which this exemption could potentially apply are strictly limited.

This exemption applies only where a business of a certain type (**relevant persons**) is engaged in providing a corporate finance service.

Relevant persons are persons that:

- can lawfully carry on a controlled investment business or a corporate finance service in the Bailiwick;
- can lawfully carry on a corporate finance service in the UK; or
- provide to their employer or partner certain types of corporate finance service.

This exemption also only applies to a limited category of personal data; only personal data processed for the purpose of, or in connection with, a **corporate finance service** provided by a **relevant person** potentially falls within this exemption.

Corporate finance service includes underwriting the issue or placing of issues of financial instruments, or services related to such underwriting. It also includes advice on capital structure, industrial strategy or mergers or acquisitions.

The most common financial instrument to which this exemption might apply would be stocks and shares. The exemption might be used by a financial adviser working for a company which is considering a bid for another undertaking and who carries out inquiries into the directors of the target undertaking. If those inquiries were to become known, by way of a response to a subject access request, it could trigger price movements in the shares in the target company. As "price" includes value, it would also cover movements in the market value of shares even when these are not sold. In this respect, the exemption prevents the premature disclosure of information that would be likely to affect the price of financial instruments and also disrupt the orderly functioning of financial markets.

There are two limbs to this exemption, Condition A and Condition B. Both limbs only apply to allow the restriction of data subject rights to the extent that the application of any of those rights have an effect, is likely to have an effect or (as the case may be) is reasonably believed to have an effect, specified in Condition A or (as the case may be) Condition B. A controller should only consider the application of this exemption if there is **very significant**

and **weighty** chance of the occurrence of the effect mentioned in Condition A or Condition B.

As with all exemptions, the application of this exemption must be assessed on a case-by-case basis. In order to assess the application of this exemption, the controller needs to consider in the particular case:

- whether the restriction of a **specific right** is necessary;
- if so, whether the restriction of the right is necessary with respect to **the specific set of personal data** concerned; and
- if so, whether the restriction of that right is necessary at the **specific point in time**.

For example, the price of financial instruments could be affected by news releases on earnings and profits, the announcement of dividends, the introduction of a new product or a product recall, securing a new large contract, an anticipated takeover or merger, or a change of senior management. A subject access request which would risk personal data relevant to any of these matters being disclosed might justify restriction of access rights for a limited time. But if the information has already been made public and a right of correction (not right of access) is requested, it might not be necessary to restrict that right of correction.

Similarly, a draft news release might contain personal data and be requested as part of a subject access request. Certain parts of the draft release might justifiably be withheld under this exemption, as being 'price-sensitive', but other parts of it could be disclosed because they are not 'price-sensitive'.

Finally, once any price-sensitive information has been released to the public, it is unlikely to be necessary to restrict the exercise of any data subject rights in relation to that information on the grounds that it could affect the price of financial instruments.

In all cases, any restriction of the right concerned must be the **minimum** necessary to avoid the effect concerned, and must be **proportionate** to the likely consequences of that effect.

As with other exemptions, the controller should document any application of this exemption and the case-by-case assessment carried out by the controller and maintain such documentation to demonstrate accountability and in order to present to the Data Protection Authority should it be requested.