

# Everything you need to know about:

## **ODPA Registration & Levy Regime**

(from January 2021)



This document gives detailed information about how the process of registering with the Office of the Data Protection Authority (ODPA) works from January 2021 onwards.



If you are new to this, please [ensure you read the Background section carefully](#) as it explains some technical terms and concepts you need to understand to follow the rest of this document.



We're here to help - please contact us on 01481 742074 or email [registrations@odpa.gg](mailto:registrations@odpa.gg).

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## **BACKGROUND**

### **1. What has changed?**

From 2021, a new registration and levy regime (approved by the States of Guernsey) is in place for the Office of the Data Protection Authority (ODPA).

This regime requires all controllers and processors established in the Bailiwick who process personal data to complete an annual return during January-February of each year (as opposed to at any point during the year) to the ODPA and pay an annual levy.

The other thing that changed at the start of 2021, is that there are two routes to registering with the ODPA:

- Route 1: **Register directly with ODPA** (available to everyone)
- Route 2: **Register with an [ODPA Levy Collection Agent](#)** (LCA) (only available to certain controllers or processors)

### **2. Why did the registration regime change at the start of 2021?**

The data protection legislation that came into force for the Bailiwick in 2018 (*The Data Protection (Bailiwick of Guernsey) Law, 2017* – 'The Law') created an independent regulator. The funding mechanism that was in place prior to that time was maintained until the end of 2020 to allow for political agreement on a sustainable and efficient funding model for post-2020.

### **3. Who decided to make these changes?**

The States of Guernsey agreed that the ODPA should be self-funding to ensure full independence.

When the legislation came into force in 2018, the ODPA started working with the States of Guernsey to agree a new registration and levy regime to enable this. All parties focused on providing a regime that was as fair, low cost, and administratively straightforward as possible for organisations.

The Committee for Home Affairs agreed a new model in February 2020 and the Policy and Resources Committee agreed it in March 2020. The ODPA was then tasked with implementing the model ready for January 2021.

### **4. How much does my registration cost?**

It is recognised that no one wants to pay large administrative costs when running a business, however big or small. The ODPA has always been absolutely clear that its funding model should be as cost effective as possible. The 2020 economic climate redoubled efforts to ensure that all expenditure is proportionate, necessary and has the highest standards of financial and operational governance. The ODPA worked hard, together with the States of Guernsey, to keep the cost organisations are required to pay as low as possible.

With all of that in mind, there is a simple cost structure:

- **£2,400** annual levy for large organisations with **50 or more full-time-equivalent (FTE\*) staff**.
- **£60** annual levy for **all other organisations**.
- **£0** annual levy for registered **charities and not-for-profit** organisations.

\*See [Schedule 1D of the Regulations \(page 48\)](#), or **question 18 below** for details on how to calculate your total FTE.

All charities/not-for profits are required to register and renew their registration annually during January – February, but are **not** required to pay the levy.

### **5. Where does my money go?**

All registration fees/annual levies allow the ODPa to maintain its self-funding status, giving it full financial independence from the States of Guernsey. This independence is both a political and legal requirement.

The ODPa's statutory responsibilities are set out in [section 61 'General functions of the Authority' of The Data Protection \(Bailiwick of Guernsey\) Law, 2017](#) and you can [read its Strategic Plan here](#).

The Bailiwick has had a data protection regulator for many years. Prior to 2021 the majority of its funding came from the States of Guernsey with some income also coming directly from registration fees paid by local organisations. The strengthened data protection regulatory framework introduced in 2018 enhanced individuals' rights to reflect the scale of personal data processing in this digital era. It also strengthened the role of the regulator to provide for appropriate powers and ensuring independence.

### **6. Why do we need to fund a data protection regulator?**

Data increasingly powers the economy as well as affecting our own individual lives, both personally and professionally. The Bailiwick relies on the free flow of data to support and develop the current economy as well as to ensure it is well positioned to take advantage of emerging digital opportunities.

Our government recognises how important data protection standards are for our jurisdiction and has therefore provided high quality legislation to ensure appropriate safeguards sit around the personal data that resides and flows through the Islands. As with any legislation, there needs to be effective oversight – both to ensure people and businesses are supported in complying with the requirements, as well as providing independent and robust investigation of complaints.

Whilst most funding came from the States of Guernsey prior to 2021, it raised challenges in relation to ensuring the ODPa's independence (both actual and perceived). With government responsible for handling some of the highest volumes and most sensitive personal data in the Bailiwick, fully independent oversight is essential. Once government made the decision to move the ODPa to a self-funding model, a lot of effort went into devising a fair, low-cost, simple registration model that provides the ODPa with sufficient funding.

Ensuring our jurisdiction has a properly resourced and effective data protection regulator supports islanders' rights, supports businesses to handle data properly and serves to underpin the Bailiwick's digital strategy.

### **7: What is personal data?**

It is any information (can be factual, or someone's opinion) that relates to an *identified or identifiable* living human being.

So personal data can be things like: your name, your address, your medical records, CCTV footage of you, your social media activity, your internet browsing history, what your boss once said in an email about you, your political views, your sexuality etc.

### **8: What is 'processing' personal data?**

'Processing' refers to pretty much anything a *controller or processor\** does with personal data.

It includes activities like: collecting, storing, organising, using, altering, disclosing, erasing and destroying personal data. Profiling is also considered to be processing.

\*A controller or processor could be: a bank, a school, a plumber, the States of Guernsey, an online retailer, a social media platform, your employer, a politician acting in their official capacity, the supermarket you shop at, your GP's practice, your insurer.

## 9. What are **controllers**? What are **processors**?

It is really important that you understand what these two legal terms mean for you, and they are often very misunderstood so below is a short explanation and a more detailed analogy which hopefully explains the differences.

In a nutshell:

|                                                                                                                                                                        |                                                                                                                                                                                                                                         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Controller</b>                                                                                                                                                      | Any entity* who is <b>responsible for the decisions made about why and how</b> they use personal data about staff, customers, suppliers, or any other people.                                                                           |
| <b>Processor</b>                                                                                                                                                       | Any entity* that is <b>given the task</b> of processing personal data <b>by a controller</b> . Processors do <b>not</b> determine the nature or the means of the processing, they <b>just do what the controller tells them to do</b> . |
| * in either case, this entity would <u>normally be an organisation</u> , but it could be a specific human being (e.g. sole traders, landlords, elected officials etc). |                                                                                                                                                                                                                                         |

### Note: you could be both

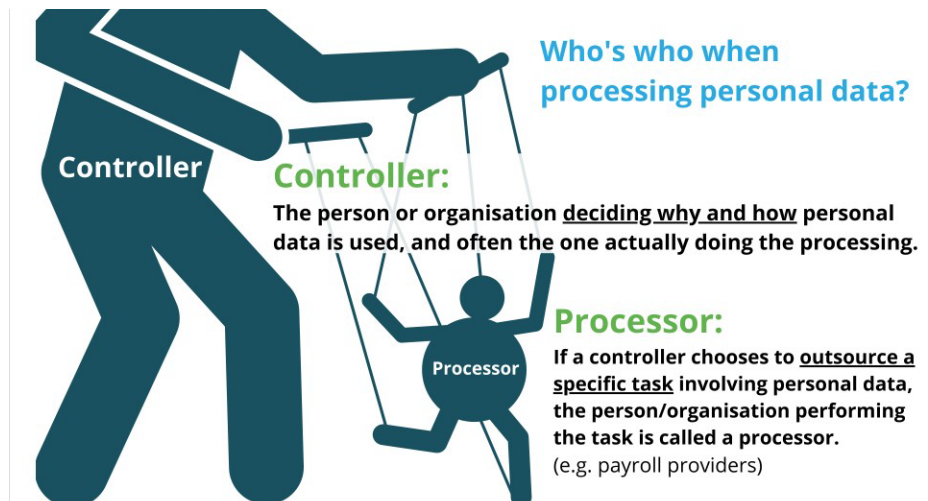
Keep in mind that the above definition means that all organisations/sole traders are likely to be a Controller for some of the personal data they use (such as information about staff/clients/volunteers etc) but they could also act as a Processor for certain tasks they perform for others. The key difference is **who is making the decisions** about how any given set of data is used.

It may help to think of the analogy of the Puppet Master shown here:

In this analogy the Puppet Master is the Controller.

It's important to note that the Controller's employees / volunteers / directors are like the Puppet Master's hands. They are almost always going to be part of the Controller, except in very specific circumstances.

The puppet is the Processor that the Controller has outsourced a specific task



involving personal data to. The Processor is not part of the Controller and does not make decisions about how the personal data are used; they just perform the task as instructed by the Controller. It's not shown in the image, but the Puppet Master could have many different puppet Processors, if they were outsourcing for example their payroll to one processor, their marketing to another etc. Anyone a Controller is giving a task to, that involves the Controller's personal data, is a Processor.

## **WHAT YOU NEED TO DO**

### **10. I am currently registered with the ODPA, what do I need to do?**

If you registered with the ODPA during January-February 2021, you will need to review and renew your registration and pay the appropriate levy **during January-February of each subsequent year**. You can complete the process yourself directly via the ODPA's website or ask a **Levy Collection Agent** (see below for more details) to do it for you.

### **11. I am not currently registered with the ODPA, what do I have to do?**

If you meet the [three criteria detailed here](#) you are legally obliged to register and pay **during January-February**. You can complete the process directly via the ODPA's website or use a **Levy Collection Agent** (see below for more details). You will then need to review and renew your registration **during January – February each year**.

### **12. I am a sole-trader does this apply to me?**

Yes, if you meet the [three criteria detailed here](#) you are legally obliged to register and pay **during January-February**. You can complete the process directly via the ODPA's website or use a **Levy Collection Agent** (see below for more details). You will then need to review and renew your registration **during January – February each year**.

### **13. I am a charity/not-for-profit, what does this mean for me?**

If you are a charity/not-for-profit (in the meaning given by section 4(1) of the *Charities and Non Profit Organisations (Enabling Provisions) (Guernsey and Alderney) Law, 2009*) you will need to complete the registration process during January-February each year and annually thereafter, but will **not** be required to pay any levy.

### **14. How often do I have to pay the levy?**

Following your initial registration fee, an annual levy (of either £50 or £2,000 depending on your organisation's size) will be due during January - February of each following year. You will be able to pay this online. Remember that all registered charities and not-for-profit organisations do **not** have to pay either the initial registration fee or the annual levy.

### **15. What if I set up a new business in, say, July 2021 (i.e. outside of the annual levy collection period)? Do I need to register directly at that point?**

No, you don't unless you answer yes to any of these four questions:

1. Do you employ **50+ Full Time Equivalent (FTE)** staff?
2. Are you required by law to appoint a [Data Protection Officer](#)?
3. Do you act as an **ODPA Levy Collection Agent**?
4. Are you a **non-profit organisation (States of Guernsey Deputies are included under 'non-profits')**?

If you answer yes to any of the above questions you must register directly with the ODPA when you first set up your business.

If you answer no to all the above questions [you can pay your registration fee \(and subsequent annual levies\) via an ODPA Levy Collection Agent](#) (LCA) – you just need to set this up **by 31 December of your first year of trading**. Alternatively you can **choose** to register directly with the ODPA during January-February of the year **following** your first year of trading.

Please remember that regardless of when you register, you are immediately required to [meet your legal obligations around taking care of people's data well](#).

#### 16. Which organisations **must register with the ODPA directly**?

Not every organisation can authorise a levy collection agent to pay the levy on their behalf. The organisations that **must register directly** with the ODPA are:

- All controllers or processors that **employ 50 or more FTEs**
- All controllers or processors the Law requires to appoint a [Data Protection Officer](#)
- All organisations who are acting as an ODPA **levy collection agent**
- All **charities, not-for-profit** organisations, and **States of Guernsey Deputies** (all of whom pay nothing)

#### 17. What is the difference between the ODPA '**registration fee**' and the ODPA '**annual levy**'?

You only pay the **registration fee** once, the very first time you register with the ODPA. All subsequent years you pay the 'annual levy' between the beginning of January and the end of February.

#### 18. The fee is based on how many staff I have - how do you **define what 'full time employee' (FTE) means**?

To calculate how many of your employees would be classed as full time employees (FTEs) please refer to the definition within [Schedule 1D of The Data Protection \(General Provisions\) \(Bailiwick of Guernsey\) \(Amendment No. 2\) Regulations, 2020 \(see: page 48\)](#) which is **reproduced below** with emphasis added for clarity. Please note that any individuals that work with you on a consultancy basis (i.e. your contract is with the organisation they are an employee of, not them as an individual) are not classed as your employees:

- **Employee** – is defined as **an individual** who has entered into or who works under (or, where the employment has ceased, who worked under) a **contract of service for the employer**, whether express or implied and whether written or oral.
- **Full time employee** can mean either:

*a) an **employee** who works or who under a contract of service is required to work for the employer 27 hours or more per week,*

*or*

*b) a **number of employees** who do not individually fall within subparagraph (a) but who collectively work or who collectively under their contracts of service are required to work for the employer, 27 hours or more per week in the aggregate.*<sup>1</sup>

*2. An individual who works or who under his contract of service is required to work for an employer is to be regarded as an employee of the employer whether the contract of service the individual has entered into or works under was made with the employer or, where the employer is a company, with an associated company of the employer.*

*3. For the avoidance of doubt –*

*(a) the hours worked by an employee includes any hours worked wholly or mainly outside the Bailiwick of Guernsey,*

*(b) a director of the employer in his capacity as director is not to be regarded as a full time employee of that employer unless the director is, in that capacity, an employee within the meaning of paragraph 1 of this schedule.*

#### 19. I am a **States of Guernsey body**, what does this mean for me?

Many States of Guernsey bodies are encompassed in a single levy to be paid at the beginning of the year – [see details of the relevant levy in Schedule 1 of The Data Protection \(General Provisions\) \(Bailiwick of Guernsey\) \(Amendment No. 2\) Regulations, 2020 \(page 38\)](#). If this covers you, there will be no need to register as this will be handled separately. Please refer to [Schedule 1B of the Regulations \(page 41\)](#) for more details of those

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<sup>1</sup> (e.g. you may employ 3 part-time people who work 10 hours, 10 hours, and 7 hours respectively – this would add up to **1 FTE**.)

bodies covered by that levy and contact the States of Guernsey's [Data Protection Team](#) in the first instance if you have any queries.

**20. I am a States of Alderney body, what does this mean for me?**

Many States of Alderney bodies are encompassed in a single levy to be paid at the beginning of the year – [see details of the relevant levy in Schedule 1 of \*The Data Protection \(General Provisions\) \(Bailiwick of Guernsey\) \(Amendment No. 2\) Regulations, 2020\* \(page 38\)](#). If this covers you, there will be no need to register as this will be handled separately. Please refer to [Schedule 1A of the Regulations \(page 42\)](#) for more details of those bodies covered by that levy.

**21. I am a Sark public entity, what does this mean for me?**

Many Sark public entities are encompassed in a single levy to be paid at the beginning of the year – [see details of the relevant levy in Schedule 1 of \*The Data Protection \(General Provisions\) \(Bailiwick of Guernsey\) \(Amendment No. 2\) Regulations, 2020\* \(page 38\)](#). If this covers you, there will be no need to register as this will be handled separately. Please refer to [Schedule 1C of the Regulations \(page 46\)](#) for more details of those bodies covered by that levy.

**22. I am responsible for paying the annual levy for several controllers or processors. How do I register them?**

Since the start of 2021 organisations registered with and/or regulated by the Guernsey Financial Services Commission (GFSC) can act as '[Levy Collection Agents](#)' (LCAs) who are authorised to declare, and pay the levies for, other controllers or processors.

The ODPA only requires the appointed LCA to declare the *number of controllers or processors* they are making a submission for and pay the combined levy. The LCA must maintain details, including company name etc. for each controller or processor it pays on behalf of and make this available to the ODPA upon request. Please [read the guidance at \*odpa.gg/LCA\*](#) for more details.

**23. I want to outsource the payment of the levy so I can focus on compliance – how do I do this?**

You need to [appoint an ODPA Levy Collection Agent](#) to pay the fee on your behalf.

## **ABOUT THE ODPA**

**24. What is the ODPA's role?**

The Office of the Data Protection Authority is the independent regulatory authority for the purposes of *The Data Protection (Bailiwick of Guernsey) Law, 2017* and associated legislation.

**25. What does the ODPA do with the data it collects for the registration process?**

Following changes to legislation in May 2019, the ODPA is no longer required to maintain a public-facing register of controllers and processors. Therefore, all registration data will only be processed internally for administrative and regulatory purposes.