

APPLICATION FORM FOR ACCREDITATION AS A DATA PROTECTION AUTHORITY

Application to the Credentials Committee for accreditation as a data protection authority pursuant to the resolutions adopted at the 23rd International Conference of Data Protection and Privacy Commissioners at Paris on 25th September 2001.

Notes:

- (a) Please complete application in French or English.
- (b) Please keep answers brief and to the point.
- (c) Please ensure that all 33 questions are answered
- (d) If you retype the form, please include the numbered questions with your answers. It is possible to avoid such retyping by getting the electronic application form in French or in English upon request by e mail at credentials@privacy.org.nz .

Details of applicant

1. Name and postal address of authority

Bailiwick of Guernsey Data Protection Office, Frances House, Sir William Place, St. Peter Port, Guernsey, Channel Islands GY1 1GX

2. Contact person for this application:

(a) Name

Dr. P.R. Harris

(b) Email address

data.protection@gov.gy

(c) Direct telephone number

440301289742077

(d) Fax contact

440301289742077

Type of application

3. The application is for accreditation as:

- (a) national Authority YES
- (b) sub-national Authority NO
- (c) Authority within an international, if yes which one..... NO

Description of applicant

4. Description of Authority (e.g. commissioner, commission, board etc)

Data Protection Commissioner

5. Is the Authority a public body? YES

6. Geographical jurisdiction

Bailiwick of Guernsey (comprising the Islands of Guernsey, Alderney and Sark), part of the British Channel Islands

7. Sectoral coverage (i.e. does the applicant's jurisdiction cover the entire public and private sectors? If only part of a sector or if there are significant activities not covered, please specify)

Public and Private sectors

8. Is the role of the Authority mainly concerned with data protection and privacy?
YES

Legal basis

9. Title of law under which the Authority is constituted

Currently : The Data Protection (Bailiwick of Guernsey) Law 1986, to be superseded, probably in August 2002, by The Data Protection (Bailiwick of Guernsey) Law 2001

10. Is this principally a data protection law? YES

11. Status of the law (e.g. statute, regulation, executive order)

Statute (Order in Council ratifying a Projet de Loi)

12. Which body made the law?

The States of Guernsey, States of Alderney and Chief Pleas of Sark approved the Projet de Loi, which was then ratified by HM the Queen in Council.

13. What body has the power to amend or revoke the law?

The States of Guernsey may amend the Law by Ordinance, complete revocation would have to be approved by the Queen in Council.

Autonomy and independence

14. Who appoints member(s) of the Authority? (Please explain if a different process applies to the presiding member from other Authority members in this question and in subsequent questions.)

The Data Protection Commissioner is appointed by the States of Guernsey.

15. What process is followed?

The legislature (the States) appoint on the nomination of the Advisory and Finance Committee of the States.

16. For what term are appointments made?

A maximum term of five years.

17. Does the law under which the Authority operates explicitly state that it acts independently? YES (Section 6 of the 2001 Law)

18. May the member(s) be removed before expiry of their term? YES

19. If yes, who may remove members of the Authority before expiry of their term?

The Advisory and Finance Committee of the States of Guernsey

20. Are there limited reasons specified in the statute, or in another law, providing the permitted grounds for removal?

The Commissioner may only be relieved of his office :
(a) pursuant to a Resolution of the States requiring the Committee to do so :
(b) on receipt of a written request by the Commissioner

21. What are the grounds for removal?

No grounds are stated.

22. Does the Authority possess the following powers (briefly describe and give statutory references)

(e) to initiate an investigation with seeking provision YES

details: Part V of the 2001 Law specifies enforcement actions that may be taken by the Commissioner, including issuing Enforcement notices, assessments of processing and Information Notices. Schedule 8 of the Law describes the powers of entry and inspection under warrants issued by the Bailiff (as head of the Court).

- (f) to report to the head of State, head of Government or legislature YES

details: Schedule 5 of the 2001 Law imposes reporting requirements on the Commissioner in respect of his financial accounts and the discharge of his functions. Under Section 52 this latter report should be laid before the States (i.e. made public).

- (g) make public statements YES

details: Section 51 of the 2001 Law requires the Commissioner to disseminate information to the general public in such form and manner as he deems appropriate.

23. Does the Authority (and its staff) have immunity from legal suit for actions performed in the course of their duties?

There is no specific provision to that effect in the Law.

24. Applicants may list any other measures set out in the statute or in other laws which guarantee the Authority's independence (for example if the law provides specifically that the Authority's finances are protected).

Schedule 5 of the 2001 Law requires the Committee to provide such accommodation and equipment etc. as the Commissioner may properly require for the proper and effectual discharge of his duties and that these costs shall be paid by the States. The Commissioner's office is however, subject to the Audit Commission.

Consistency with international instruments

25. Does the Authority explicitly implement any international instrument (for example if the law under which the Authority operates specifies that it implements such international instrument)? The new Law amends the domestic law of the Bailiwick so that it is possible to extend ratification of (b) (i) & (ii) below and ensure an adequate level of protection under (d) below.

If "yes", which of the following does it principally implement?

- | | | |
|-----|--|-----------|
| (a) | OECD Guidelines (1980) | NO |
| (b) | (i) Council of Europe Convention No 108 (1981) | see above |
| | (ii) Council of Europe Additional Protocol (8 November 2001) | see above |
| (c) | UN Guidelines (1990) | NO |
| (d) | EU Directive (1995) | see above |

26. Does the law instead, or additionally, implement any general or specific international instrument? (If so, list the international body and the instrument) NO

[Empty box]

27. Have significant questions been raised about the extent to which the law is consistent with the international instruments which are claimed to be implement in answer to questions 25 and 26? (Applicants should supply further information to assist the Committee including a description of any measures under way to address these inconsistencies.)

NO

Appropriate functions

28. Does the Authority possess functions in any of the following areas (briefly describe and give statutory references):

(a) compliance (e.g. audit, inspection) YES

details: Sections 22 and 42 of the Law covers assessment of processing by the Commissioner.

(b) approvals (e.g. prior-checking, notification) YES

details: Sections 16-26 of the Law cover notification by data controllers. Section 22 preliminary assessment by the Commissioner.

(c) redress for individuals (e.g. complaints, conciliation enforcement) YES

details: sections 7-15 cover the rights of individuals including compensation,

(d) sanctions available to Authority (for example, prosecution and enforcement) YES

details: sections 40-50 of the Law cover Enforcement., including the issue of enforcement notices, requests for assessment, information notices and special information notices, failure to comply, rights of appeal and powers of entry and inspection.

(e) guidance (e.g. compliance advice) YES

details: General provisions as to the dissemination of information by the Commissioner are included in section 51 of the Law. Codes of practice may be issued by, or approved by the Commissioner.

(f) public education YES

details: as for (e)

- (g) policy advice for government YES

details: as for (f)

- (h) studies or research (e.g. into developing technologies, privacy issues) NO

details:

Additional comments

29. Applicants are invited to offer any further comments that they wish.

The attached copy of a paper that was presented at the Bonn Conference highlights a generic problem with the implementation in a "Third Country" of legislation that is intended to be equivalent to the Directive.

Other materials

30. List any attachments which will accompany the application as an electronic attachment or to follow by post.

Draft copy of Annual report (as attachment).

31. If law under which the Authority operates is accessible on the Internet, please give the reference

URL:
[www.dataprotection.gov.gg/2001 Law/2001 Law.pdf](http://www.dataprotection.gov.gg/2001%20Law/2001%20Law.pdf)

32. If a recent annual report of the Authority (or a similar recent publication outlining typical activities) is available on the Internet, please give the reference

URL: draft version provided as attachment (not yet published)

Research use

33. With the consent of applicants, the Committee proposes to make copies of the applications available to appropriate researchers approved by the Committee to facilitate a study on data protection. Please indicate whether you agree to this use:

- I agree to this application being released to a researcher YES

Making the application

The application should be emailed to the credentials committee at credentials@privacy.org.nz

If sent as an email attachment it should be in M/S Word.

If unable to email the application, it should be posted to:

Credentials Committee
C/- Privacy Commissioner

P O Box 466
Auckland
New Zealand

The Committee needs access to a copy of the law under which the Authority is constituted. This need not be supplied in hard copy if it is available on the Internet and listed at question 31. If the law itself is not in English or French, it will be useful to supply an English or French summary or translation if one exists.

Use of information

The information in this form will be used for processing the application and will be disclosed to members of the committee and their staff (being the commissioners from New Zealand, France and the United Kingdom) and future committees. It may be also disclosed also to the Data Protection Authorities which participate to the international conference and approved researchers. Any personal data contained in the form is available for access and correction in accordance with the applicable data protection laws of current and future committees. In the first instance it is subject to the New Zealand Privacy Act 1993.

ACCREDITATION OF DATA PROTECTION AUTHORITY
CHECKLIST FOR THE CREDENTIALS SUB-GROUP

1	Name of Authority	Data Protection Commissioner, Bailiwick of Guernsey
		Notes: The application is as “Bailiwick of Guernsey Data Protection Office”, but consistent with the style of other applications and the legal authority, it appears correct for present purposes to refer to the Data Protection Commissioner.
2	Does the authority have clear and wide ranging data protection functions covering a broad area of economic activity (eg not just an advising body or a body operating in a narrow field such as medical privacy)? Yes	Notes
3	Legal Basis. Is the authority a public body established on an appropriate legal basis (eg by statute or regulation)? Yes	Notes
4	Autonomy and Independence? Is the authority guaranteed on appropriate degree of autonomy and independence to perform its functions (eg the power to make public statements and protection from removal from office)? Yes	Notes
5	Consistency with International Instruments. Is the law under which the authority operates compatible with at least one of the international instruments dealing with data protection and privacy (eg EU Directive, OECD	Notes The application is tentative on this point. However, it seems that the Data Protection (Bailiwick of Guernsey) Law 2001, to supersede existing law in August 2002, will bring domestic law more closely

Guidelines, Council of Europe Convention)?

Yes

into accordance with CoE and EU instruments.

Guernsey's current law is drafted in similar terms to the UK's old DPA 1984. This UK law was aimed at addressing CoE standards and therefore the equivalent Guernsey law would achieve the same end.

6 Appropriate Functions.
Does the authority have an appropriate range of functions with the legal powers necessary to perform those functions (eg the power to receive and investigate complaints from individuals without seeking permission)?

Yes

Notes

7 Does the Sub-group recommend accreditation?

Yes

Notes

8 If accreditation is recommended what is the accreditation as?

National authority (within the UN criteria)

Authority within a limited sub-national territory

Notes

The application is as a national authority. The sub-group uses as its working guide for recognising national status the UN criteria. Guernsey is not on the list of member states on the UN website: www.un.org/Overview/unmember

Recommended that it be accredited as a sub-national authority. Care must be taken as certain German Lander have applied to be both national and sub-national authorities, presumably because the federal authority has limited jurisdiction in their Land. Their applications may be limited to solely sub national status. A widening of the criteria from the UN criteria could lead to a significant impact in these areas

9 If accreditation is as an authority within an international/supranational body does the recommendation include voting rights?

Not applicable

Notes

10 If accreditation is not recommended does the Sub Group recommend that accreditation is refused or is more information needed before a decision can be made?

Not applicable

Notes

11 If accreditation is not recommended and the application is from an authority with narrow functions does the Sub Group recommend that, at the discretion of the conference host, observer status is granted?

Not applicable

Notes

If more information is required what is this:

Clarification of the question of whether the application should be granted as a national or sub-national authority. It may be appropriate to await the position of similarly placed jurisdictions (Jersey, Isle of Man) and, if necessary, make similar inquiries in respect of each.

See comments above on position of German Lander

Signed on behalf of the Sub-group:

Blair Stewart

Date:

22 May 2002

Jonathan Bamford

Date:

8/7/02

Date:

Note: 2 signatures required for recommendations for accreditation.
3 signatures required for recommendations for refusal