#### 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 23<sup>rd</sup> International Conference of Data Protection and Privacy Commissioners at Paris on 25<sup>th</sup> September 2001.

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- (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 <a href="mailto:credentials@privacy.org.nz">credentials@privacy.org.nz</a>.

# 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

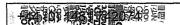
- 2. Contact person for this application:
  - (a) Name

Dr. P.R. Harris

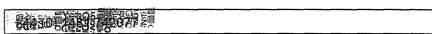
(b) Email address



(c) Direct telephone number



(d) Fax contact



## Type of application

3. The application is for accreditation as:

(a) national AuthorityYES(b) sub-national AuthorityNO

(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 Commissionner

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) pusuant 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).

make public statements YES (g)

> 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

UN Guidelines (1990) (c)

NO

EU Directive (1995) (d)

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

27.	Have significant questions been raised about the extent to which the law is consist with the international instruments which are claimed to be implement in answer questions 25 and 26? (Applicants should supply further information to assist Committee including a description of any measures under way to address the inconsistencies.)  NO					
Appro	priate f	functions				
28.		the Authority possess functions in any of the follow	ing areas (briefly describe	and		
	give st (a)	atutory references): compliance (e.g. audit, inspection)	YES			
		details:Sections 22 and 42 of the Law covers assess by the Commissioner.	ment of processing			
	(b)	approvals (e.g. prior-checking, notification)	YES			
		details: Sections 16-26 of the Law cover notification to controllers. Section 22 preliminary assessment by the				
	(c)	redress for individuals (e.g. complaints, conciliation	enforcement) YES			
		details: sections 7-15 cover the rights of individuals in compensation,	ncluding			
	(d)	sanctions available to Authority (for example, prose YES	cution and enforcement			
		details: sections 40-50 of the Law cover Enforcement of enforcement notices, requests for assessment, infuspecial information notices, failure to comply, rights of entry and inspection.	formation notices and			
	(e)	guidance (e.g. compliance advice)	YES			
		details: General provisions as to the dissemination of by the Commissioner are included in section 51 of the Codes of practice may be issued by, or approved by Commissioner.	e Law.			
	(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)

	 	 	<del>,</del>	
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

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 Protec Guernsey	tion	Commissioner,	Bailiwick	of
			Guer but o othe auth pres	s: application is as ' rnsey Data Protec consistent with the r applications an ority, it appears o ent purposes to r Protection Com	ction Office" ne style of d the legal correct for refer to the	
2	Does the authority has wide ranging data profunctions covering a beconomic activity (eg advising body or a body narrow field such as me	tection road area of oot just an operating in a	Notes	S		
	Yes	•			-	
3	Legal Basis. Is the authority a puble established on an app basis (eg by statute or r	ropriate legal	Note	S		
4	Autonomy and Indepers Is the authority guara appropriate degree of independence to perform of the power statements and protection of the power of th	nteed on autonomy and orm its r to make public	Note	S		
5	Consistency with Interior Instruments. Is the law under whice operates compatible to of the international in dealing with data proprivacy (eg EU Directivations)	h the authority with at least one astruments tection and	poin Data Gue exis	s application is tent at. However, it set a Protection (Bail rnsey) Law 2001, ting law in Augus ag domestic law n	ems that the liwick of to supersed t 2002, will	e

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.

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)?

Ves

Notes

7 Does the Sub-group recommend accreditation?

Yes

8 If accreditation is recommended what is the accreditation as?

National authority (within the UN criteria)

Authority within a limited subnational territory Notes

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: <a href="https://www.un.org/Overview/unmember">www.un.org/Overview/unmember</a>

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

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9	If accreditation is as a within an international/suprana does the recommenda voting rights?  Not applicable	ntional body	Notes		
10	If accreditation is not does the Sub Group reaccreditation is refuse information needed becan be made?	ecommend that ed or is more	Notes		
	Not applicable	•			
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		
			17.		
	If more information is Clarification of the granted as a nation appropriate to awa (Jersey, Isle of Ma respect of each.  See comments abo	e question of w nal or sub-nation ait the position n) and, if neces	hether onal au of sim ssary, 1	ithority. It i ilarly placed make simila	nay be l jurisdictions r inquiries in
	ned on behalf of the o-group:	Blair Stewart		Date:	22 May 2002
		Jonathan Bamfo	ord	Date:	8/7/02

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