

**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.

**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](mailto:credentials@privacy.org.nz).

**Details of applicant**

1. Name and postal address of authority

Office of the Data Protection Registrar, Morier House, St. Helier, JERSEY, JE1 1DD

2. Contact person for this application:

(a) Name

H. Michael Smith Data Protection Registrar/Commissioner Designate

(b) Email address

hsmith@jco.gov.je

(c) Direct telephone number

+354 494 2200

(d) Fax contact

+354 494 2200

**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 Office/Data Protection Commission (When New Law comes in)

5. Is the Authority a public body? YES

6. Geographical jurisdiction

The Bailiwick of Jersey (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)

Private and Public 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

The Data Protection (Jersey) Law 1987 (Current) Data Protection (Jersey) Law 2002 currently in draft form planned for implementation end 2002.

10. Is this principally a data protection law? YES

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

Statute

12. Which body made the law?

States of Jersey Government Ratified by the Queen in Council

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

States of Jersey Government by Ordinance for amendments any full revocation 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 registrar/Commissioner is appointed by the States of Jersey Government as per the Second Schedule Pat1.

15. What process is followed?

Nominations to the legislature debated and appointment.

16. For what term are appointments made?

Five years renewable to a maximum term of office of fifteen

17. Does the law under which the Authority operates explicitly state that it acts independently? YES

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 States Government after a proposition debated and voted on in the States Chamber.

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

The Registrar/Commissioner may only be relieved of office:  
- by Resolution of the States Of Jersey  
- receipt of a written request from the Registrar/Commissioner giving 6 months notice of his/her intend to cease.

21. What are the grounds for removal?

Only on demonstrable lack of confidence by the States in the Commissioner's effectiveness in meeting his overall objectives and duties as laid down in the Law.

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

(e) to initiate an investigation with seeking provision YES

Yes under Article 35(2)(3)

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

Annually via a senior Committee (Currently Finance & Economics) via the Finance & Economics Committee Article 35(5) and made publicly available

(g) make public statements YES

As required to enhance the understanding of the Law Article 35(4).

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

No complete immunity but indemnity cover as per the Registrar's/Commissioner's Contract of service.

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).

The Law states in the Second Schedule that funds and resources will be provided as felt necessary and appropriate by the Establishment Committee (advice given to the Committee by the Registrar).

#### 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)? YES

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

- |     |  |                        |
|-----|--|------------------------|
| (a) | OECD Guidelines (1980)                                       | YES                    |
| (b) | (i) Council of Europe Convention No 108 (1981)               | YES                    |
|     | (ii) Council of Europe Additional Protocol (8 November 2001) | YES                    |
| (c) | UN Guidelines (1990)   | NO                     |
| (d) | EU Directive (1995)  | NOT YET (New Law will) |

**Note: Our new Law (in draft form) will make it possible to extend ratification of (b) (i) & (ii) of (b) above and meet the adequacy requirements of EU Directive 1995 for data transfers to Jersey from within the EU.**

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 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

On request by a data subject or by request of a Data Controller/User under Article 35(2)

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

On request by a proposed data Controller/User Article 35(1)

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

Yes with powers of information collection witness statements and the issuing of Enforcement Notices Articles 21 & 22.

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

Yes via Enforcement Notices Article 9 and Prosecutions for offences in Article 4 in conjunction with Her Majesty's Attorney General.

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

Using our Web-site and by the issuing of guidance notes and brochures Article 35.

(f) public education YES

As per (e) above

(g) Policy advice for government YES

As per (e) above. Also via annual and specific reports to States Committees; as felt necessary by the Registrar/Commissioner.

(h) studies or research (e.g. into developing technologies, privacy issues) YES

In conjunction with the British and Irish Data Protection Authorities (BIDPA) group and other legal undertakings

#### Additional comments

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

Please refer to our Web site for access to our Laws and annual reports.

#### Other materials

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

Please refer to our Web URL in 31 below site for access to our Laws and general content/guidelines and annual reports.

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

[www.dataprotection.gov.je](http://www.dataprotection.gov.je)

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

[www.dataprotection.gov.je](http://www.dataprotection.gov.je)

## 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

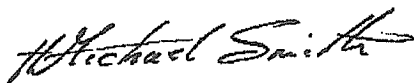
The application should be emailed to the credentials committee at [credentials@privacy.org.nz](mailto:credentials@privacy.org.nz)

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

I hereby make this application dated 23-05-02



Data Protection Registrar

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.

Please take a copy of our Law off our Website.

## 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   | <b>Data Protection Registrar, Jersey</b>   |
|   |   | Notes:<br><b>To be renamed Data Protection Commissioner</b>  |
| 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)?<br><br><b>Yes</b>   | Notes  |
| 3 | Legal Basis.<br>Is the authority a public body established on an appropriate legal basis (eg by statute or regulation)?<br><br><b>Yes</b>   | Notes  |
| 4 | Autonomy and Independence?<br>Is the authority guaranteed an appropriate degree of autonomy and independence to perform its functions (eg the power to make public statements and protection from removal from office)?<br><br><b>Yes</b>   | Notes  |
| 5 | Consistency with International Instruments.<br>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 Guidelines, Council of Europe Convention)?<br><br><b>Yes</b> | Notes<br><b>OECD and CoE (both Convention and Protocol) claimed. However, Jersey is not shown in its own right as having signed or ratified Convention 108 or the Protocol. Instead, it is covered by the UK's ratification. UK declared Convention applies to Jersey from 12/87 and further declared the Jersey DP Registrar to be the designated authority in 1/94. UK</b> |



declared on 8/11/01 extension of the additional protocol to Jersey. See: <http://conventions.coe.int> Noted that new law will enable Jersey law to meet EU adequacy requirements.

- 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 it as a its working guide for recognising national status the UN criteria. Jersey is not on the list of member states on the UN website: [www.un.org/Overview/unmember](http://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

[Empty box]

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:

**The position taken needs to be consistent with that of Isle of Man and Guernsey**  
*Agreed- But see comments regarding German Lander*

Signed on behalf of the Sub-group:

**Blair Stewart**

Date: **27 May 2002**

*Jonathan Bamford*

Date: **8/7/02**

[Empty signature box]

Date: [Empty date box]

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