



The Road to  
**GDPR Compliance**  
December - 12<sup>TH</sup> 2017  
NO 3 of 6



**ADVISING ON THE RISKS  
SO YOU CAN FOCUS ON  
THE REWARDS**

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**Good Morning  
&  
Welcome Back  
&  
Some Housekeeping to start**



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**Housekeeping**

- 8.15 start
- Fire alarms
- Mobiles
- 9.15 to 9.30 close
- Questions 9.30>



• SLIDO....

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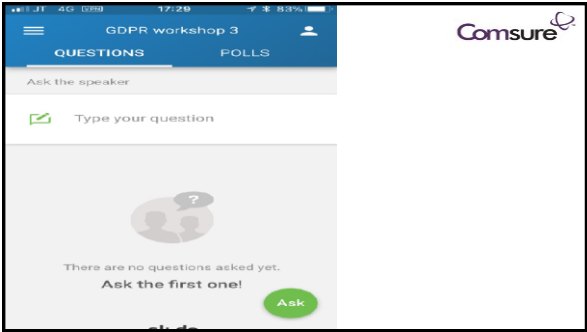
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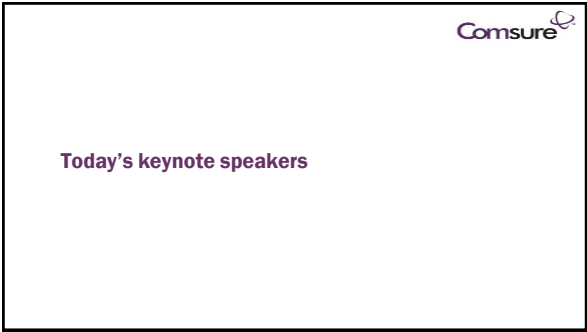
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**Matthew Berry**



- 1. Matthew is the Senior Legal Adviser in the Advice Team in the Law Officers' Department in Jersey.
- 2. Matthew is advising the Government of Jersey on the development of its new data protection legislation.
- 3. Prior to moving to Jersey in 2012, Matthew worked for over 10 years as a legal adviser at the Cabinet Office and the Ministry of Justice in the UK, advising the UK Government on, among other things, compliance with data protection and other information rights matters.



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**VIDEO**



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## Jersey's draft Data Protection Laws: Outline presentation

12 December 2017

[illegible]

## Jersey's new data laws

New legislation lodged on 5 December, will come into force on 25 May 2018

## 1. Data Protection (Jersey) Law 201-

Drafted to ensure continued “adequacy”. implements, in full, both the GDPR and the associated Law Enforcement Directive (“LED”) by providing for the obligations of data controllers, processors and the rights of data subjects.

**2. Data Protection Authority (Jersey) Law 201-**

Establishes and sets out the powers and functions of the new Data Protection Authority.

[illegible]

## Jersey's status

Jersey is a “third country” for the purpose of the EU DP Law

Jersey has an 'adequacy' decision from the EU Commission, (2008/393/EC) and this rolls over for GDPR, but not for Law Enforcement Directive purposes

New legislation will provide 'essentially equivalent' protection to EU law

Gov is engaging with the European Commission, the UK and other third countries

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First letter -

C

C = Consistency

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Outcomes from the consultation process

Engagement with stakeholders throughout the policy development and law drafting process.

Key themes of the feedback that

- government should, where possible, avoid gold-plating new EU legislation;
- protect citizens and their personal data and ensuring the people of Jersey are no less protected than EU citizens.

This feedback is reflected in the draft Data Protection Law - which closely follows the text of the GDPR and LED in most places.

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Consistency in definitions and content

A few key definitions form the building blocks of the existing EU law, our 2005 Law and the GDPR and LED.

Key definitions in Part 1 of the Data Protection Law, such as 'personal data', 'controller', 'processor' and 'processing' are essentially unchanged in the GDPR and LED, but where clarified this is reflected in Part 1.

A couple of exceptions and additions – e.g. 'data processor' excludes employee of controller; 'Personal data and data subject' - when someone is identifiable.

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### Processing conditions

In our 2005 Law we set out a series of processing conditions in Schedule 2 and in Regulations.

Each reflects a legitimate purpose or justification for processing personal data.

These have largely been brought forward from the 2005 Law and Regs.

Data controllers must satisfy at least one processing condition for each data processing activity.

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Second letter -

**S**

**S = Structure and summaries**

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### Structure and summaries - controllers

Parts 2 and 3 of the draft Law, and Article 21 set out the duties of controllers.

- Article 6 lists the duties resting on the controller in the rest of the Data Protection Law;
- 6(1)(a) - includes being responsible for and able to demonstrate compliance with the Data Protection Principles in Article 8;
- Principles are as cast in the same way as the GDPR;
- Includes record keeping subject to 6(3); and
- Security covered by Article 21 - duty on controllers and processors.

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### Structure and summaries - processors

Part 4 of the Data Protection Law and Article 19 set out the duties of processors.

- Article 22 lists the duties resting on the processor in the rest of the Data Protection Law;
  - Includes compliance with obligations in Article 19 in relation to contracting;
  - Includes record keeping subject to Article 22(2); and
  - Security covered by Article 21 - duty on controllers and processors.
- Specific provision about liability and status of processor where exceeds instructions of data controller.

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Third letter -

H

H = High risk processing

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### High risk processing

GDPR and LED introduce a number of obligations regarding data governance, particularly in relation to high risk processing.

Including the requirement to:

- carry out a Data Protection Impact Assessment for high risk processing (Art 16);
- consult the Authority prior to commencing high risk processing (Art 17); and
- consult the Authority on high risk legislation (Art 18).

Note Article 88(2) though, consultation obligations only come into effect in May **2019**

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Fourth letter -

S

S = Security

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Security

Article 21 of the Data Protection Law - duties of controllers and processors

Obligation to take proportionate organisational and technical measures to ensure that personal data is kept securely.

Such measures may include the adoption of appropriate policies for staff and the deployment of appropriate software.

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Fifth letter -

L

L = Law Enforcement Directive

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### Law Enforcement Directive

Directive (EU) 2016/680 – on protecting personal data processed for the purpose of criminal law enforcement (“the Law Enforcement Directive”)

Schedule 1 of the Data Law modifies application of the law for ‘competent authorities’ where personal data is processed for a law enforcement purpose.

Essential for working with other jurisdictions

In force 6 May 2018




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Sixth letter -

N

N = New rights

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### New rights of data subjects

Part 6 of the Data Protection Law contains the rights of data subjects. Like the GDPR these include the right to:

- subject access ;
- rectification;
- erasure (the “right to be forgotten”);
- restrict the processing of personal data;
- data portability;
- not to be subject to automated decision making; and
- object.

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Same exceptions...

Part 7 of the Data Protection Law provides the exemptions from the requirements of the Law. These are split into four divisions:

- General exemptions
- Exemptions from transparency and data subject rights;
- Exemptions from Articles 27 and 28; and
- Permissions and exemptions by Regulations.

Scope to derogate found in, among other places, Article 23 of the GDPR.

Exemptions are brought forward from the 2005 Law, but extended in a number of case to cover all data subject rights.

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Seventh letter -

O

O = Offences

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Offences

The offences the draft Law brings forward from the 2005 Law are:

- unlawfully obtaining personal data in Article 71 of the draft Law;
- requiring a person to produce certain records in Article 72 of the draft Law;
- providing false information set out in Article 73 of the draft Law; and
- obstruction set out in Article 74 of the draft Law.

Other enforcement mechanisms in Part 9 of the Data Protection Law

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Eighth letter -

A

A = Authority

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Data Protection Authority

The Data Protection Authority has an improved governance structure.

It is established as a body corporate, governed by a Board.

Information Commissioner role will be chief executive officer of the Authority.

The Authority will have greater structural independence from the Government.

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Ninth letter -

I

I = Increased powers

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Increased powers of the Authority

The Authority is given:

- the ability to issue opinions and guidance, public statements, promote public awareness and encourage the drawing up of codes of conduct;
- investigatory powers in Schedule 1 to the Data Protection Authority Law; and
- a range of potential order making powers to enforce the law in Article 25 and the power to issue penalties under Article 26 and 27.

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Tenth letter -

T

T = Timeline and Transition

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Timeline

- 5 December was lodged with the Assembly
- 16 January 2018, to be debated
- February 2018, to be sent for Royal Assent
- 25 May 2018, the Laws come into force

Separate fees Regulations to be lodged by 5 February 2018

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Transitional provision

Set out in Schedule 5 of the Data Protection Law

Set out in Schedule 2 of the Data Protection Authority Law

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Who is the Christmas character?



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Where to find out more

[im@gov.je](mailto:im@gov.je) (SOJ Information Management team)

<https://thinkgdpr.org/> (Jersey)

<https://ico.org.uk/for-organisations/data-protection-reform/> (UK)

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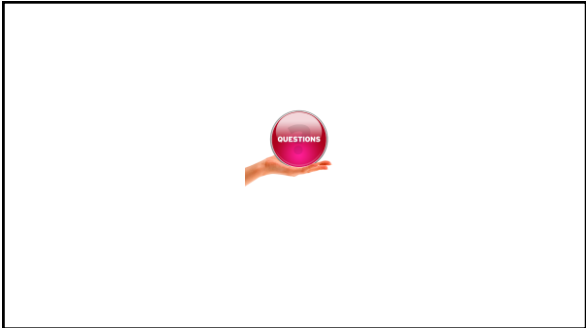
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Next legislative steps

- 1. 16 January 2018 - Drafts to be debated if not called in
- 2. February 2018 - Privy Council / Royal Assent
- 3. May 2018 - In force

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**Do not forget**

Logos of various organizations: BEDELL CRISTIN, OFFICE OF THE INFORMATION COMMISSIONER, PINEL, CRA, DATA VAULT, Comsure, and LOGICALIS.

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Dates + Key note speakers

1. Thursday 25 January 2018 - C.I. Legal obligations & regulatory considerations

– Edward Drummond @ Bedell Cristin

2. Thursday 22 February 2018 - GDPR Compliance Checklist & GAP Analysis

– Ricky Magalhaes @ Logicalis

– Emma Martins @ the Office of the Information commissioner

3. March date to be announced

Comsure

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FINISH  
ANY QUESTIONS...?





managing the risks  
so you can focus  
on the rewards



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managing the risks  
so you can focus  
on the rewards



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