

Island of  Guernsey

**Ordinance of the States**

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**30th June, 2004**

**The European Communities  
(Implementation of Privacy Directive)  
(Guernsey) Ordinance, 2004**

# **The European Communities (Implementation of Privacy Directive) (Guernsey) Ordinance, 2004**

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# **The European Communities (Implementation of Privacy Directive) (Guernsey) Ordinance, 2004**

**THE STATES**, in pursuance of their Resolution of the 25<sup>th</sup> June, 2003<sup>a</sup>, and in exercise of the powers conferred on them by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>b</sup> and all other powers enabling them, hereby order:-

## **Purpose of the Ordinance.**

1. The purpose of this Ordinance is to implement in respect of the Islands certain provisions concerning the processing of personal data and the protection of privacy in the electronic communications sector as referred to in the Directive, with the intent that standards of protection within the Islands meet or are consistent with the standards provided for by the Directive.

## **Relationship between this Ordinance and the Data Protection Law.**

2. Nothing in this Ordinance shall relieve a person of his obligations under the Data Protection (Bailiwick of Guernsey) Law, 2001<sup>c</sup> (the “**Data Protection Law**”) in relation to the processing of personal data.

## **Security of public electronic communications services.**

3. (1) Subject to subsection (2), a provider of a public electronic communications service (“**the service provider**”) shall take appropriate technical and organisational measures to safeguard the security of that service.

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<sup>a</sup> Article II of Billet d'État No. XIII of 2003.

<sup>b</sup> Order in Council No. III of 1994.

<sup>c</sup> Order in Council No. V of 2002.

(2) If necessary, the measures required by subsection (1) may be taken by the service provider in conjunction with the provider of the electronic communications network by means of which the service is provided, and that network provider shall comply with any reasonable requests made by the service provider for these purposes.

(3) Where, notwithstanding the taking of measures as required by subsection (1), there remains a significant risk to the security of the public electronic communications service, the service provider shall inform the subscribers concerned of -

- (a) the nature of that risk;
- (b) any appropriate measures that the subscriber may take to safeguard against that risk; and
- (c) the likely costs to the subscriber involved in the taking of such measures.

(4) For the purposes of subsection (1), a measure shall only be taken to be appropriate if, having regard to -

- (a) the state of technological developments, and
- (b) the cost of implementing it,

it is proportionate to the risks against which it would safeguard.

(5) Information provided for the purposes of subsection (3) shall be provided to the subscriber free of any charge other than the cost to the subscriber

of receiving or collecting the information.

**Confidentiality of communications.**

4. (1) Subject to subsection (4), a person shall not use an electronic communications network to store information, or to gain access to information stored, in the terminal equipment of a subscriber or user unless the requirements of subsection (2) are met.

(2) The requirements are that the subscriber or user of that terminal equipment -

(a) is provided with clear and comprehensive information about the purposes of the storage of, or access to, that information; and

(b) is given the opportunity to refuse the storage of, or access to, that information.

(3) Where an electronic communications network is used by the same person to store or access information in the terminal equipment of a subscriber or user on more than one occasion, it is sufficient for the purposes of this section that the requirements of subsection (2) are met in respect of the initial use.

(4) Subsection (1) shall not apply to the technical storage of, or access to, information -

(a) for the sole purpose of carrying out or facilitating the transmission of a communication over an electronic communications network; or

- (b) where such storage or access is strictly necessary for the provision of an information society service requested by the subscriber or user.

**Restrictions on the processing of certain traffic data.**

5. (1) Subject to subsections (2) and (3), traffic data relating to subscribers or users which are processed and stored by a public communications provider shall, when no longer required for the purpose of the transmission of a communication, be -

- (a) erased;
- (b) in the case of an individual, modified so that they cease to constitute personal data of that subscriber or user; or
- (c) in the case of a corporate subscriber, modified so that they cease to be data that would be personal data if that subscriber were an individual.

(2) Traffic data held by a public communications provider for purposes connected with the payment of charges by a subscriber or in respect of interconnection payments may be processed and stored by that provider until the time specified in subsection (5).

(3) Traffic data relating to a subscriber or user may be processed and stored by a provider of a public electronic communications service if -

- (a) such processing and storage are for the purpose of marketing electronic communications services, or for

the provisions of value added services to that subscriber or user; and

(b) the subscriber or user to whom the traffic data relate has given his consent to such processing or storage; and

(c) such processing and storage are undertaken only for the duration necessary for the purposes specified in paragraph (a).

(4) Where a user or subscriber has given his consent in accordance with subsection (3), he shall be able to withdraw it at any time.

(5) The time referred to in subsection (2) is the end of the period during which legal proceedings may be brought in respect of payments due or alleged to be due or, where such proceedings are brought within that period, the time when those proceedings are finally determined.

(6) Legal proceedings shall not be taken to be finally determined-

(a) until the conclusion of the ordinary period during which an appeal may be brought by either party (excluding any possibility of an extension of that period, whether by order of a court or otherwise), if no appeal is brought within that period; or

(b) if an appeal is brought, until the conclusion of that appeal.



(7) References in subsection (6) to an appeal include references to an application for permission or leave to appeal.

**Further provisions relating to the processing of traffic data under section 5.**

6. (1) Processing of traffic data in accordance with section 5(2) or (3) shall not be undertaken by a public communications provider unless the subscriber or user to whom the data relate has been provided with information regarding the types of traffic data which are to be processed and the duration of such processing and, in the case of processing in accordance with section 5(3), he has been provided with that information before his consent has been obtained.

(2) Processing of traffic data in accordance with section 5 shall be restricted to what is required for the purposes of one or more of the activities listed in subsection (3) and shall be carried out only by the public communications provider or by a person acting under his authority.

(3) The activities referred to in subsection (2) are activities relating to -

- (a) the management of billing or traffic;
- (b) customer enquiries;
- (c) the prevention or detection of fraud;
- (d) the marketing of electronic communications services;  
or
- (e) the provision of a value added service.

(4) Nothing in this Ordinance shall prevent the furnishing of traffic data to a person who is a competent authority for the purposes of any provision relating to the settling of disputes (by way of legal proceedings or otherwise) which is contained in, or made by virtue of, any enactment.

**Itemised billing and privacy.**

7. (1) At the request of a subscriber, a provider of a public electronic communications service shall provide that subscriber with bills that are not itemised.

(2) The Director General of Utility Regulation shall have a duty, when exercising his functions under the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001<sup>d</sup>, to have regard to the need to reconcile the rights of subscribers receiving itemised bills with the rights to privacy of calling users and called subscribers.

**Prevention of calling line identification - outgoing calls.**

8. (1) This section applies, subject to sections 13 and 14, to outgoing calls where a facility enabling the presentation of calling line identification is available.

(2) The provider of a public electronic communications service shall provide users originating a call by means of that service with a simple means to prevent presentation of the identity of the calling line on the connected line as respects that call.

(3) The provider of a public electronic communications service shall provide subscribers to the service, as respects their line and all calls

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<sup>d</sup> Orders in Council No. XI of 2001.

originating from that line, with a simple means of preventing presentation of the identity of that subscriber's line on any connected line.

(4) The measures to be provided under subsections (2) and 3) shall be provided free of charge.

**Prevention of calling or connected line identification - incoming calls.**

9. (1) This section applies to incoming calls.

(2) Where a facility enabling the presentation of calling line identification is available, the provider of a public electronic communications service shall provide the called subscriber with a simple means to prevent, free of charge for reasonable use of the facility, presentation of the identity of the calling line on the connected line.

(3) Where a facility enabling the presentation of calling line identification prior to the call being established is available, the provider of a public electronic communications service shall provide the called subscriber with a simple means of rejecting incoming calls where the presentation of the calling line identification has been prevented by the calling user or subscriber.

(4) Where a facility enabling the presentation of connected line identification is available, the provider of a public electronic communications service shall provide the called subscriber with a simple means to prevent, without charge, presentation of the identity of the connected line on any calling line.

(5) In this section “**called subscriber**” means the subscriber receiving a call by means of the service in question whose line is the called line (whether or not it is also the connected line).

**Publication of information for the purposes of sections 8 and 9.**

10. Where a provider of a public electronic communications service provides facilities for calling or connected line identification, he shall provide information to the public regarding the availability of such facilities, including information regarding the options to be made available for the purposes of sections 8 and 9.

**Co-operation of communications providers for the purposes of sections 8 and 9.**

11. For the purposes of sections 8 and 9, a communications provider shall comply with any reasonable requests made by the provider of the public electronic communications service by means of which facilities for calling or connected line identification are provided.

**Restrictions on the processing of location data.**

12. (1) This section shall not apply to the processing of traffic data.

(2) Location data relating to a user or subscriber of a public electronic communications network or a public electronic communications service may only be processed -

(a) where that user or subscriber cannot be identified from such data; or

(b) where necessary for the provision of a value added service, with the consent of that user or subscriber.

(3) Prior to obtaining the consent of the user or subscriber under subsection (2)(b), the public communications provider in question must provide the following information to the user or subscriber to whom the data relate -

- (a) the types of location data that will be processed;
- (b) the purposes and duration of the processing of those data; and
- (c) whether the data will be transmitted to a third party for the purpose of providing the value added service.

(4) A user or subscriber who has given his consent to the processing of data under subsection (2)(b) shall -

- (a) be able to withdraw such consent at any time, and
- (b) in respect of each connection to the public electronic communications network in question or each transmission of a communication, be given the opportunity to withdraw such consent, using a simple means and free of charge.

(5) Processing of location data in accordance with this section shall -

- (a) only be carried out by -
  - (i) the public communications provider in question;
  - (ii) the third party providing the value added service in question; or

- (iii) a person acting under the authority of a person falling within (i) or (ii); and
- (b) where the processing is carried out for the purposes of the provision of a value added service, be restricted to what is necessary for those purposes.

**Tracing of malicious or nuisance calls.**

13. (1) A communications provider may override anything done to prevent the presentation of the identity of a calling line where -

- (a) a subscriber has requested the tracing of malicious or nuisance calls received on his line; and
- (b) the provider is satisfied that such action is necessary and expedient for the purposes of tracing such calls.

(2) Any term of a contract for the provision of public electronic communications services which relates to such prevention shall have effect subject to the provisions of subsection (1).

(3) Nothing in this Ordinance shall prevent a communications provider, for the purposes of any action relating to the tracing of malicious or nuisance calls, from storing and making available to a person with a legitimate interest data containing the identity of a calling subscriber which were obtained while subsection (1) applied.

**Emergency calls.**

14. (1) For the purposes of this section, “**emergency calls**” means calls to either the national emergency call number 999 or the single European

emergency call number 112.

- (2) In order to facilitate responses to emergency calls -
  - (a) all such calls shall be excluded from the requirements of section 8,
  - (b) no person shall be entitled to prevent the presentation on the connected line of the identity of the calling line; and
  - (c) the restriction on the processing of location data under section 12(2) shall be disregarded.

**Termination of automatic call forwarding.**

**15.** (1) Where -

- (a) calls originally directed to another line are being automatically forwarded to a subscriber's line as a result of action taken by a third party, and
- (b) the subscriber requests his provider of electronic communications services ("**the subscriber's provider**") to stop the forwarding of those calls,

the subscriber's provider shall ensure, free of charge, that the forwarding is stopped without any avoidable delay.

(2) For the purposes of subsection (1), every other communications provider shall comply with any reasonable requests made by the subscriber's provider to assist in the prevention of that forwarding.

**Directories of subscribers.**

**16.** (1) This section applies in relation to a directory of subscribers, whether in printed or electronic form, which is made available to members of the public or a section of the public, including by means of a directory enquiry service.

(2) The personal data of an individual subscriber shall not be included in a directory unless that subscriber has, free of charge, been -

- (a) informed by the collector of the personal data of the purposes of the directory in which his personal data are to be included, and
- (b) given the opportunity to determine whether such of his personal data as are considered relevant by the producer of the directory should be included in the directory.

(3) Where personal data of an individual subscriber are to be included in a directory with facilities which enable users of that directory to obtain access to that data solely on the basis of telephone numbers -

- (a) the information to be provided under subsection (2)(a) shall include information about those facilities; and



(b) for the purposes of subsection (2)(b), the express consent of the subscriber to the inclusion of his data in a directory with such facilities must be obtained.

(4) Data relating to a corporate subscriber shall not be included in a directory where that subscriber has advised the producer of the directory that it does not want its data to be included in that directory.

(5) Where the data of an individual subscriber have been included in a directory, that subscriber shall, without charge, be able to verify, correct or withdraw those data at any time.

(6) Where a request has been made under subsection (5) for data to be withdrawn from or corrected in a directory, that request shall be treated as having no application in relation to an edition of a directory that was produced before the producer of the directory received the request.

(7) For the purposes of subsection (6), an edition of a directory which is revised after it was first produced shall be treated as a new edition.

(8) In this section, “**telephone numbers**” has the same meaning as “**numbers**” in section 31(1) of the Telecommunication (Bailiwick of Guernsey) Law, 2001<sup>e</sup> but does not include numbers which are used as internet domain names, internet addresses or addresses or identifiers incorporating either an internet domain name or an internet address, including an electronic mail address.

**Use of automated calling systems.**

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<sup>e</sup> Orders in Council No. XIV of 2001.

17. (1) A person shall neither transmit, nor instigate the transmission of, communications comprising recorded matter for direct marketing purposes by means of an automated calling system except in the circumstances referred to in subsection (2)

(2) Those circumstances are where the called line is that of a subscriber who has previously notified the caller that for the time being he consents to such communications being sent by, or at the instigation of, the caller on that line.

(3) A subscriber shall not permit his line to be used in contravention of subsection (1).

(4) For the purposes of this section, an “**automated calling system**” is a system which is capable of -

- (a) automatically initiating a sequence of calls to more than one destination in accordance with instructions stored in that system; and
- (b) transmitting sounds which are not live speech for reception by persons at some or all of the destinations so called.

**Use of facsimile machines for direct marketing purposes.**

18. (1) A person shall neither transmit, nor instigate the transmission of, unsolicited communications for direct marketing purposes by means of a facsimile machine where the called line is that of -

- (a) an individual subscriber, except in the circumstances referred to in subsection (2);
- (b) a corporate subscriber who has previously notified the caller that such communications should not be sent on that line; or
- (c) a subscriber and the number allocated to that line is listed in the Regulation 25 Register.

(2) The circumstances referred to in subsection (1)(a) are that the individual subscriber has previously notified the caller that he consents for the time being to such communications being sent by, or at the instigation of, the caller.

(3) A subscriber shall not permit his line to be used in contravention of subsection (1).

(4) A person shall not be held to have contravened subsection (1)(c) where the number allocated to the called line has been listed on the Regulation 25 Register for less than 28 days preceding that on which the communication is made.

(5) Where a subscriber who has caused a number allocated to a line of his to be listed in the Regulation 25 Register has notified a caller that he does not, for the time being, object to such communications being sent on that line by that caller, such communications may be sent by that caller on that line, notwithstanding that the number allocated to that line is listed in the Register.

(6) Where a subscriber has given a caller notification pursuant to subsection (5) in relation to a line of his -

- (a) the subscriber shall be free to withdraw that notification at any time, and
- (b) where such notification is withdrawn, the caller shall not send such communications on that line.

(7) The provisions of this section are without prejudice to the provisions of section 17.

**Unsolicited calls for direct marketing purposes.**

**19.** (1) A person shall neither use, nor instigate the use of, a public electronic communications service for the purposes of making unsolicited calls for direct marketing purposes where -

- (a) the called line is that of a subscriber who has previously notified the caller that such calls should not for the time being be made on that line; or
- (b) the number allocated to a subscriber in respect of the called line is one listed in the Regulation 26 Register.

(2) A subscriber shall not permit his line to be used in contravention of subsection (1).

(3) A person shall not be held to have contravened subsection (1)(b) where the number allocated to the called line has been listed on the Regulation 26 Register for less than 28 days preceding that on which the call is made.

(4) Where a subscriber who has caused a number allocated to a line of his to be listed in the Regulation 26 Register has notified a caller that he does not, for the time being, object to such calls being made on that line by that caller, such calls may be made by that caller on that line, notwithstanding that the number allocated to that line is listed in the Register.

(5) Where a subscriber has given a caller notification pursuant to subsection (4) in relation to a line of his -

(a) the subscriber shall be free to withdraw that notification at any time; and

(b) where such notification is withdrawn, the caller shall not make such calls on that line.

**Use of electronic mail for direct marketing purposes.**

**20.** (1) This section applies to the transmission of unsolicited communications by means of electronic mail to individual subscribers.

(2) Except in the circumstances referred to in subsection (3), a person shall neither transmit, nor instigate the transmission of, unsolicited communications for the purposes of direct marketing by means of electronic mail unless the recipient of the electronic mail has previously notified the sender that he consents for the time being to such communications being sent by, or at the instigation of, the sender.

(3) A person may send or instigate the sending of electronic mail for the purposes of direct marketing where -

- (a) that person has obtained the contact details of the recipient of that electronic mail in the course of the sale or negotiations for the sale of a product or service to that recipient;
- (b) the direct marketing is in respect of that person's similar products and services only; and
- (c) the recipient has been given a simple means of refusing (free of charge except for the costs of the transmission of the refusal) the use of his contact details for the purposes of such direct marketing at the time that the details were initially collected and where he did not initially refuse the use of the details, at the time of each subsequent communication.

(4) A subscriber shall not permit his line to be used in contravention of subsection (2).

**Use of electronic mail for direct marketing purposes where the identity or address of the sender is concealed.**

21. A person shall neither transmit, nor instigate the transmission of, a communication for the purposes of direct marketing by means of electronic mail -

- (a) where the identity of the person on whose behalf the communication has been sent has been disguised or concealed; or

- (b) where a valid address to which the recipient of the communication may send a request that such communications cease has not been provided.

**Information to be provided for the purposes of sections 17, 18 and 19.**

22. (1) Where a public electronic communications service is used for the transmission of a communication for direct marketing purposes the person using, or instigating the use of, the service shall ensure that the following information is provided with that communication -

- (a) in relation to a communication to which sections 17 (automated calling systems) and 18 (facsimile machines) apply, the particulars mentioned in subsections (2)(a) and (b);
- (b) in relation to a communication to which section 19 (telephone calls) applies, the particulars mentioned in subsection (2)(a) and, if the recipient of the call so requests, those mentioned in subsection (2)(b).

(2) The particulars referred to in subsection (1) are -

- (a) the name of the person; and
- (b) either the address of the person or a telephone number on which he can be reached free of charge.

**Modifications of contracts.**

23. To the extent that any term in a contract between a subscriber to and the provider of a public electronic communications service or such a provider and

the provider of an electronic communications network would be inconsistent with a requirement of this Ordinance, that term shall be void.

**Public security.**

24. (1) Nothing in this Ordinance shall require a communications provider to do, or refrain from doing, anything (including the processing of data) if exemption from the requirement in question is required for the purpose of safeguarding the security of the British Islands.

(2) Subject to subsection (4), a certificate signed by Her Majesty's Procureur certifying that exemption from any requirement of this Ordinance is or at any time was required for the purpose of safeguarding public security shall be conclusive evidence of that fact.

(3) A certificate under subsection (2) may identify the circumstances in which it applies by means of a general description and may be expressed to have prospective effect.

(4) Any person directly affected by the issuing of a certificate under subsection (2) may appeal to the Royal Court against the issuing of the certificate.

(5) If, on an appeal under subsection (4), the Royal Court finds that Her Majesty's Procureur did not have reasonable grounds for issuing the certificate, the Court may allow the appeal and quash the certificate.

(6) Where, in any proceedings under or by virtue of this Ordinance, it is claimed by a communications provider that a certificate under subsection (2) which identifies the circumstances in which it applies by means of a general description applies in the circumstances in question, any other party to the



proceedings may appeal to the Royal Court on the ground that the certificate does not apply in those circumstances and subject to any determination under subsection (7), the certificate shall be conclusively presumed so to apply.

(7) On any appeal under subsection (6), the Royal Court may determine that the certificate does not so apply.

(8) In this section -

(a) Subsections (8), (9), (10), (11) (12) and (13) of section 28 of the Data Protection Law apply for the purposes of this section as they apply for the purposes of section 28 of that Law;

(b) section 58 of the Data Protection Law shall apply for the purposes of this section as if the reference in that section to the functions of a court under that Law included a reference to the functions of a court under subsections (4) to (7); and

(b) section 66 of the Data Protection Law shall apply in respect of the making of rules relating to the functions of the Royal Court under this section.

**Legal requirements, law enforcement etc.**

25. (1) Nothing in this Ordinance shall require a communications provider to do, or refrain from doing, anything (including the processing of data) -

(a) if compliance with the requirement in question -

- (i) would be inconsistent with any requirement imposed by or under an enactment or by a court order; or
  - (ii) would be likely to prejudice the prevention or detection of crime or the apprehension or prosecution of offenders; or
- (b) if exemption from the requirement in question -
- (i) is required for the purposes of, or in connection with, any legal proceedings (including prospective legal proceedings);
  - (ii) is necessary for the purposes of obtaining legal advice; or
  - (iii) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

**Proceedings for compensation for failure to comply with requirements of this Ordinance.**

26. (1) A person who suffers damage by reason of any contravention of any of the requirements of this Ordinance by any other person shall be entitled to bring proceedings for compensation from that other person for that damage.

(2) In proceedings brought against a person by virtue of this section it shall be a defence to prove that he had taken such care as in all the circumstances was reasonably required to comply with the relevant requirement.

(3) The provisions of this section are without prejudice to those of section 27.

**Enforcement - extension of certain provisions of the Data Protection Law.**

27. (1) The provisions of Part V and section 73 of and Schedule 8 to the Data Protection Law are extended for the purposes of this Ordinance and, for those purposes, shall have effect subject to the modifications set out in Schedule 1.

(2) In section 28 “**enforcement functions**” means the functions of the Data Protection Commissioner under the provisions referred to in subsection (1) as extended by that subsection.

(3) The provisions of this section are without prejudice to those of section 26.

**Request that the Data Protection Commissioner exercise his enforcement functions.**

28. Where it is alleged that there has been a contravention of any of the requirements of this Ordinance -

- (a) a person aggrieved by the alleged contravention; or
- (b) the Director General of Utility Regulation,

may request the Commissioner to exercise his enforcement functions in respect of that contravention, but those functions shall be exercisable by the Commissioner whether or not he has been so requested.

**Technical assistance to the Data Protection Commissioner.**

29. The Director General of Utility Regulation shall offer such assistance as may be reasonably requested by the Commissioner in connection with his enforcement functions.

**Transitional provisions.**

30. The provisions in Schedule 2 shall have effect.

**Interpretation.**

31. (1) In this Ordinance, unless the context otherwise requires -

“**bill**” includes an invoice, account, statement or other document of similar character and “**billing**” shall be construed accordingly;

“**call**” means a connection established by means of a telephone service available to the public allowing two-way communication in real time;

“**the Commissioner**” means the Commissioner appointed under section 6 of the Data Protection Law;

“**the Department**” means the Home Department of the States;

“**communication**” means any information exchanged or conveyed between a finite number of parties by means of a public electronic communications service, but does not include information conveyed as part of a programme service, except to the extent that such information can be related to the identifiable subscriber or user receiving the information.

“**communications provider**” means a person who establishes, operates or maintains an electronic communications network or provides an electronic communications service;

“**company**” means a body corporate, of whatever description, incorporated with or without limited liability in any part of the world, and includes a Guernsey company;

“**corporate subscriber**” means a subscriber who is company;

“**Data Protection Law**” means the Data Protection (Bailiwick of Guernsey) Law, 2001;

“**the Directive**” means the Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)<sup>f</sup>;

“**Director General of Utility Regulation**” means the holder of the office of the Director General of Utility Regulation under section 1(1) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001;

“**electronic communications network**” means a telecommunications network;

“**electronic communications service**” means a telecommunications service;

“**electronic mail**” means any text, voice, sound or image message sent over a public electronic communications network which can be stored in

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<sup>f</sup> Official Journal L 201, 31/07/2002 p. 37.

the network or in the recipient's terminal equipment until it is collected by the recipient and includes messages sent using a short message service;

“**Guernsey company**” means a company the memorandum and articles of which are registered in the Register of Companies within the meaning of section 117(1) of the Companies (Guernsey) Law, 1994<sup>g</sup>;

“**individual**” means a living individual and includes an unincorporated body of such individuals;

“**information society service**” has the meaning given in regulation 2(1) of the Electronic Commerce (EC Directive) Regulations 2002<sup>h</sup>;

“**instrument**” means any order (including any Order of the Royal Court), regulations, rules or other subsidiary legislative instrument;

“**Islands**” means the Islands of Guernsey, Herm and Jethou;

any reference to a “**line**” shall, without prejudice to subsection (3), be construed as including a reference to anything that performs the function of a line, and “**connected**”, in relation to a line, is to be construed accordingly;

“**location data**” means any data processed in an electronic communications network indicating the geographical position of the terminal equipment of a user of a public electronic communications service, including data relating to -

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<sup>g</sup> Orders in Council Nos. XXXIII of 1994; XIV of 1996 and II of 2002.

<sup>h</sup> United Kingdom S.I. 2002/2013.

- (f) the latitude, longitude or altitude of the terminal equipment;
- (g) the direction of travel of the user; or
- (h) the time the location information was recorded;

“**OFCOM**” means the Office of Communications as established by section 1 of the Office of Communications Act 2002<sup>i</sup>;

“**Privacy Regulations**” means the Privacy and Electronic Communications (EC Directive) Regulations 2003<sup>j</sup>;

“**programme service**” has the meaning given in section 201 of the Broadcasting Act 1990<sup>k</sup>;

“**public communications provider**” means a provider of a public electronic communications network or a public electronic communications service;

“**public electronic communications network**” means an electronic communications network provided wholly or mainly for the purpose of

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<sup>i</sup> An Act of Parliament (2002 c.11)

<sup>j</sup> United Kingdom S.I. 2003/2426.

<sup>k</sup> An Act of Parliament (1990 c.42); certain provisions of the Act have been extended to Guernsey by United Kingdom S.Is. 1991/191 and 1994/1064.

making electronic communications services available to members of the public;

“**public electronic communications service**” means any electronic communications service that is provided so as to be available for use by members of the public;

“**Regulation 25 Register**” means the register to be maintained and kept by OFCOM under regulation 25 of the Privacy Regulations;

“**Regulation 26 Register**” means the register to be maintained and kept by OFCOM under regulation 26 of the Privacy Regulations;

“**States**” means the States of Deliberation of Guernsey;

“**subscriber**” means a person who is a party to a contract with a provider of public electronic communications services for the supply of such services;

“**telecommunications network**” has the meaning given by section 31(1) of the Telecommunications (Bailiwick of Guernsey) Law, 2001;

“**telecommunications service**” has the meaning given by section 31(1) of the Telecommunications (Bailiwick of Guernsey) Law, 2001;

“**traffic data**” means any data processed for the purpose of the conveyance of a communication on an electronic communications network or for the billing in respect of that communication and includes data relating to the routing, duration or time of a communication;



“**user**” means any individual using a public electronic communications service; and

“**value added service**” means any service which requires the processing of traffic data or location data beyond that which is necessary for the transmission of a communication or the billing in respect of that communication.

(2) Unless the context otherwise requires, expressions used in this Ordinance that are not defined in subsection (1) shall -

- (a) where they are defined in the Data Protection Law, have the same meaning as in that Law; or
- (b) where they are not defined in the Data Protection Law and are defined in the Directive, have the same meaning as in the Directive.

(3) Any reference in this Ordinance to time after an event is a reference to a period of that length of time beginning on the day after that event.

(4) Unless the context otherwise requires, a reference in this Ordinance to -

- (a) an enactment;
- (b) an instrument;
- (c) a regulation or directive (including, for the avoidance of doubt the Directive) made by the Council of the

European Union;

- (d) an Act of Parliament; or
- (e) subordinate legislation (including for the avoidance of doubt the Privacy Regulations) made under any provision of an Act of Parliament,

is a reference thereto as from time to time amended, re-enacted (with or without modification) extended or applied.

- (5) Unless the context otherwise requires -
  - (a) a reference in this Ordinance to a numbered or lettered, section, subsection, paragraph or clause is a reference to the section, subsection, paragraph or clause of this Ordinance which is so numbered or lettered; and
  - (b) a reference in a provision of this Ordinance to a numbered or lettered subsection, paragraph or clause is a reference to the subsection, paragraph or clause of that provision which is so numbered or lettered.

**Power of Department to make Orders.**

32. (1) The Department may by Order make such provision, further to that comprised within this Ordinance, as may be necessary for the purpose of giving full force and effect to the Directive in respect of the Islands.

- (2) Any Order under this Ordinance -

- (a) may be amended or repealed by a subsequent Order hereunder;
  - (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, including (without limitation) -
    - (i) provision as to the creation and punishment of offences in respect of contraventions of the Order;
    - (ii) provision amending or modifying any provision of this Ordinance.
- (3) Any power conferred by this Ordinance to make any Order may be exercised -
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases;
  - (b) so as to make, as respects the cases in relation to which it is exercised -
    - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise);

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes;
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(4) Any Order made under this Ordinance shall be laid before a meeting of the States as soon as may be after being made and if at that meeting or the next subsequent meeting the States resolve that the Order be annulled, the Order shall cease to have effect but without prejudice to anything done under the Order or to the making of a new Order.

**Extent.**

33. This Ordinance shall have effect in the Islands of Guernsey, Herm and Jethou.

**Citation.**

34. This Ordinance may be cited as the European Communities (Implementation of Privacy Directive) (Guernsey) Ordinance, 2004.

SCHEDULE 1

MODIFICATIONS FOR THE PURPOSES OF THIS ORDINANCE TO PART V  
AND SECTION 73 OF AND SCHEDULE 8 TO THE DATA PROTECTION  
(BAILIWICK OF GUERNSEY) LAW, 2001 AS EXTENDED BY SECTION 27

*Modifications to section 40 of the Data Protection Law*

1. In section 40 -
  - (a) in subsection (1) -
    - (i) for “data controller” substitute “person”;
    - (ii) for “data protection principles” substitute “requirements of the European Communities (Implementation of Privacy Directive) (Guernsey) Ordinance, 2004 (in this Part referred to as “the relevant requirements”)”; and
    - (iii) for “principle or principles” substitute “requirement or requirements”;
  - (b) in subsection (2) omit “or distress”;
  - (c) omit subsections (3), (4), (5), (9) and (10); and

- (d) in subsection (6)(a), for “data protection principle or principles” substitute “relevant requirement or requirements”.

*Modifications to section 41 of the Data Protection Law*

- 2. In sections 41(1) and (2), for “data protection principle or principles”, in both places where that phrase occurs, substitute “relevant requirement or requirements”.

*Modification to section 42 of the Data Protection Law*

- 3. Section 42 shall be omitted.

*Modifications to section 43 of the Data Protection Law*

- 4. In section 43 -

- (a) for subsections (1) and (2) substitute the following -

“(1) If the Commissioner reasonably requires any information for the purpose of determining whether a person has complied or is complying with the relevant requirements, he may serve that person with a notice (in this Law referred to as “an information notice”) requiring him, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to compliance with the relevant requirements as is so specified.

(2) An information notice must contain a statement that the Commissioner regards the specified information as relevant for the purpose of determining whether the person has complied or is complying with the relevant requirements and his reason for regarding it as relevant for that purpose.”;

- (b) in subsection (6)(a), after “under” insert “the European Communities (Implementation of Privacy Directive) (Guernsey) Ordinance, 2004 or”;
- (c) in subsection 6(b), after “arising out of” insert “the said Ordinance or”; and
- (d) omit subsection (10).

*Modifications to sections 44, 45 and 46 of the Data Protection Law*

- 5. Omit sections 44, 45 and 46.

*Modifications to section 47 of the Data Protection Law*

- 6. In section 47 -
  - (a) in subsection (1) for “, an information notice or a special information notice” substitute “or an information notice”; and
  - (b) in subsection (2) omit “or a special information notice”.

*Modifications to section 48 of the Data Protection Law*

- 7. In section 48 -
  - (a) in subsections (1) and (3), for “, an information notice or a special information notice”, in both places where that phrase occurs, substitute “or an information notice”;

- (b) in subsection (3) for “, 43(5) or 44(6)” substitute “or 43(5)”; and
- (c) omit subsection (4).

*Modification to section 49 of the Data Protection Law*

- 8. In section 49, omit subsection (5).

*Modifications to paragraphs 1 and 8 of Schedule 8 to the Data Protection Law*

- 9. In paragraph 1 of Schedule 8 -

- (a) for subparagraph (1)(a) substitute -

“(a) that a person has contravened or is contravening any of the requirements of the European Communities (Implementation of Privacy Directive) (Guernsey) Ordinance, 2004 (in this Schedule referred to as “the 2004 Ordinance”); or”; and

- (b) omit subparagraph (2).

- 10. In paragraph 8 of Schedule 8 -

- (a) in subparagraph (1)(a) after the words “rights under” insert “the 2004 Ordinance or”; and

- (b) in subparagraph (1)(b) after the words “arising out of” insert “the 2004 Ordinance or”.



SCHEDULE 2

TRANSITIONAL PROVISIONS

*Directories*

1. Section 16 shall not apply in relation to unrevised editions of directories first published before the coming into force of section 30.

*Notifications*

2. (1) A notification of consent given to a caller by a subscriber, in the type of circumstances referred to in section 17(2) before the coming into effect of section 30, shall have effect after the coming into force of section 30, as a notification given by that subscriber for the purposes of section 17(2).

(2) A notification of a type similar to that referred to in section 18(1)(b) given to a caller by a corporate subscriber before the coming into effect of section 30, shall have effect after the coming into force of section 30, as a notification given by that subscriber for the purposes of section 18(1)(b).

(3) A notification of consent given to a caller by an individual subscriber, in the circumstances referred to in section 18(2) before the coming into effect of section 30, shall have effect after the coming into force of section 30, as a notification given by that subscriber for the purposes of section 18(2).

(4) A notification of a type similar to that referred to in section 19(1)(a) given to a caller by an individual subscriber before the coming into effect of section

30, shall have effect after the coming into force of section 30, as a notification given by that subscriber for the purposes of section 19(1).