



The trusted solution in wealth structuring

GDPR and Guernsey

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GDPR, or the European General Data Protection Regulation (Regulation EU 2016/679), will become effective in the European Union on 25 May 2018. This new regulation is designed to enhance the protection of personal data of EU citizens wherever it is held. The regulations therefore have extra territorial effect and will apply to organisations within the EU who process personal data, and organisations not within the EU but who hold personal data of EU citizens. As Guernsey is not part of the EU, Guernsey has undertaken to replace its existing data protection law with the Data Protection (Bailiwick of Guernsey) Law, 2017 ("the New Law"), which also becomes effective on 25 May 2018, and mirrors the GDPR Law.

The New Law takes a principles based approach to data protection - it sets broad principles that apply regardless of what kind of personal data is held. This enables firms to interpret these principles in manners which are applicable to their business. Against this, firms can adopt a risk based approach which balances fundamental rights and freedoms of the individual whose data is being held against the operations of the organisation in designing its systems, strategies, security, etc.

More data is now considered personal and thus subject to the New Law, which makes it clear that any information that can be used to identify an individual is personal data, including genetic, mental and physical health data, social identity data and many more. Firms that hold personal data are therefore far more accountable than before and the majority will need to appoint a Data Protection Officer. In the event that any personal data is lost or compromised, this will need to be reported to the supervisory authority within 72 hours, as well as to individuals whose data has been compromised in many cases.

In Guernsey, the Office of The Data Protection Commissioner is the supervisory authority for the new data protection Law, and has the power under the New Law to issue fines of up to 4% of a firm's worldwide turnover or €20m. The application of these fines will be "effective, proportionate and dissuasive".

The New Law provides improved rights for data subjects - extended rights to access, extended rights to erasure (right to be forgotten), clearer rights to object and to rectification. In addition a new right to receive information in a commonly used portable file format has been included.

The new Law defines six clear principles of personal data processing - Lawfulness, Specified Purpose, Data Minimisation, Accuracy, Retention and Security. Thus the personal data held must be for a lawful reason, be held for a specified purpose, be the minimum necessary, be accurate, be deleted when no longer required for the stated reasons, and it must be securely held.

It is clear that the introduction of the New Law will provide greater protection for personal data being processed in Guernsey and it ensures that the island maintains its status as a leading international finance centre.