



Everything you need to know about:
ODPA Registration & Levy Regime

(from January 2021)



Q. What is changing?

From 2021, a new registration and levy regime (approved by the States of Guernsey) will be in place for the Office of the Data Protection Authority (ODPA).

This regime requires all controllers and processors established in the Bailiwick who process personal data to complete an annual return during January-February of each year (as opposed to at any point during the year) to the ODPA and pay an annual levy.

The other thing that is changing is that, from 2021, there will be two routes to registering with the ODPA:

- Route 1: **Register directly with ODPA** (available to everyone)
- Route 2: **Register via an [ODPA Levy Collection Agent](#)** (LCA) (only available to certain entities)

Q. Why is the regime changing?

The data protection legislation that came into force for the Bailiwick in 2018 (*The Data Protection (Bailiwick of Guernsey) Law, 2017 – ‘The Law’*) created an independent regulator. The funding mechanism that was in place prior to that time was maintained until the end of 2020 to allow for political agreement on a sustainable and efficient funding model for post-2020.

Q. Who decided to make these changes?

The States of Guernsey agreed that the ODPA should be self-funding to ensure full independence.

When the legislation came into force in 2018, the ODPA started working with the States of Guernsey to agree a new registration and levy regime to enable this. All parties focused on providing a regime that was as fair, low cost, and administratively straightforward as possible for organisations.

The Committee for Home Affairs agreed the new model in February 2020 and the Policy and Resources Committee agreed it in March 2020. The ODPA was then tasked with implementing the model ready for January 2021.

Q. How much will it cost?

It is recognised that no one wants to pay large administrative costs when running a business, however big or small. The ODPA has always been absolutely clear that its funding model should be as cost effective as possible. The 2020 economic climate redoubled efforts to ensure that all expenditure is proportionate, necessary and has the highest standards of financial and operational governance. The ODPA have worked hard, together with the States of Guernsey, to keep the cost organisations are required to pay as low as possible.

With all of that in mind, there is a simple two-tier cost structure:

- For large organisations with **50 or more full-time-equivalent (FTE*) staff** the annual levy will be **£2,000/year**.
- For **all other organisations**, the annual levy will be **£50/year**.

**The Regulation [The Data Protection (General Provisions) (Bailiwick of Guernsey) (Amendment No. 2) Regulations, 2020 – [see Guernsey Legal Resources](#)] includes details on how to calculate your total FTE.*

All charities/not-for profits are required to register and renew their registration annually between January – February, but will not be required to pay the levy.

Q. Where will the money go?

The new fees regime will allow the ODPA to move towards self-funding status, giving it full financial independence from the States of Guernsey. This independent status is both a political and legal requirement.

The ODPA's statutory responsibilities are set out at odpa.gg/about-us (under 'Functions of The Authority and ODPA') and you can see its plan for performing these tasks via the [ODPA Strategic Plan \(2019-2022\)](#).

The Bailiwick has had a data protection regulator for many years. Prior to 2021 the majority of its funding came from the States of Guernsey with some income also coming directly from registration fees paid by local organisations. The strengthened data protection regulatory framework introduced in 2018 enhanced individuals' rights to reflect the scale of personal data processing in this digital era. It also strengthened the role of the regulator to provide for appropriate powers and ensuring independence.

Q. Why do we need to fund a data protection regulator?

Data increasingly powers the economy as well as affecting our own individual lives, both personally and professionally. The Bailiwick relies on the free flow of data to support and develop the current economy as well as to ensure it is well positioned to take advantage of emerging digital opportunities.

Our government recognises how important data protection standards are for our jurisdiction and has therefore provided high quality legislation to ensure appropriate safeguards sit around the personal data that resides and flows through the Islands. As with any legislation, there needs to be effective oversight – both to ensure people and businesses are supported in complying with the requirements, as well as to ensure that complaints are investigated independently and robustly.

Whilst most funding has come from the States of Guernsey up until now, it raised challenges in relation to ensuring the ODPA's independence (both actual and perceived). With government responsible for handling some of the highest volumes and most sensitive personal data in the Bailiwick, fully independent oversight is essential. Once government made the decision to move the ODPA to a self-funding model, a lot of effort went into devising a fair, low-cost, simple registration model that provides the ODPA with sufficient funding.

Ensuring our jurisdiction has a properly resourced and effective data protection regulator supports islanders' rights, supports businesses to handle data properly and serves to underpin the Bailiwick's digital strategy.

Q: What is personal data?

It is any information that relates to an *identified* or *identifiable* living person. Things like: your name, your address, your medical records, CCTV footage of you, your social media activity, your internet browsing history, what your boss once said in an email about you, your political views, your sexuality etc.

Q: What is 'processing' personal data?

'Processing' refers to pretty much anything an *entity** does with personal data. It includes activities like: collecting, storing, organising, using, altering, disclosing, erasing and destroying personal data. Profiling is also considered to be processing.

*An 'entity' could be: a bank, a school, a plumber, the States of Guernsey, an online retailer, a social media platform, your

employer, a politician acting in their official capacity, the supermarket you shop at, your GP's practice, your insurer, in short: **anyone who is deciding how personal data is used within their work**. These sorts of entities are called 'controllers' in data protection law.

WHAT YOU NEED TO DO

Q. I am registered with the ODPa now, what does it mean for me?

If you are currently registered with the ODPa, you will need to provide the ODPa with new information confirming your registration and pay the appropriate levy between January-February 2021.

If you complete an annual validation with [Guernsey Registry](#), you will be offered the opportunity to complete your ODPa registration and pay the levy at the end of the Guernsey Registry's process.

If you do not complete an annual validation with Guernsey Registry, you can simply complete the process directly via the ODPa's website or use a **Levy Collection Agent** (see below for more details). You will be required to do this annually between January – February each year.

Q. I am not currently registered with the ODPa, what will I have to do?

If you are not currently required to register with the ODPa because you benefit from the limited exemptions (this mostly applies to small businesses, see [odpa.gg/exemptions](#) for details), those exemptions will end at the end of 2020 (the only exception is for domestic/household purposes). You will therefore need to register and pay between January-February 2021.

If you complete an annual validation with [Guernsey Registry](#), you will be offered the opportunity to complete your ODPa registration at the end of the Registry's process. If you do not complete an annual validation with Guernsey Registry, you will be able to register and pay the levy directly via the ODPa website or use a **levy collection agent** (see below for more details). You will need to do this annually between January-February each year.

Q. I am a sole-trader does this apply to me?

Yes, as mentioned above if you process any personal data and have previously made use of the registration exemptions (see [odpa.gg/exemptions](#) for details) these cease on 31 December 2020 and you are required to register and pay the levy directly with the ODPa website or use a **levy collection agent** (see below for more details).

You will need to do this annually between January-February, starting in 2021.

Q. I am a charity/not-for-profit, what does this mean for me?

If you are a non-profit/charity (in the meaning given by section 4(1) of the *Charities and Non Profit Organisations (Enabling Provisions) (Guernsey and Alderney) Law, 2009*) you will need to complete the registration process as above between January-February 2021 and annually thereafter, but will not be required to pay the levy.

Q. How often do I have to pay the data protection levy?

Following your initial registration fee, payable by all (except charities/not-for-profits) in January-February 2021 an annual levy (of either £50 or £2,000 depending on your organisation's size) will be due between January - February of each following year. You will be able to pay this online.

Q. What happens if I need to register for the first time in July 2021? Will I be charged in full then and again in full in January 2022, or will the levy be pro rata?

The very first time you register with the ODPA you will be required to pay the registration fee applicable to you as a controller or processor (£2,000 for large organisations, £50 for all others) regardless of when in the year you register.

You will then be required to pay the annual levy for 2022 between January and February that year and annually thereafter.

Q. Which organisations must register with the ODPA directly?

Not every organisation can authorise a levy collection agent to pay the levy on their behalf. The organisations that **must register directly** with the ODPA are:

- All entities that employ 50 or more FTEs
- All entities the Law requires to appoint a [Data Protection Officer](#)
- All organisations who are acting as a levy collection agent for the ODPA
- All charities, not-for-profit organisations, and States of Guernsey Deputies (no levy payment)

Q. I complete an annual validation via Guernsey Registry, how will this process work for me?

The ODPA want to make the registration process as straightforward as possible. This ensures that costs are kept to a minimum and it also does not divert you with administrative processes which do little to support overall data protection compliance.

To this end, the ODPA is working with [Guernsey Registry](#) to make sure you are given a timely prompt to register with the ODPA once you have completed your annual validation with the Guernsey Registry.

If you prefer, you can of course disregard the prompt at the end of the Guernsey Registry process and simply register directly with the ODPA online at a time convenient to you between January-February 2021 or alternatively use an LCA (as detailed below).

Q. I do not complete an annual validation with Guernsey Registry, how will this process work for me?

You will be able to register directly via the ODPA website or ask an LCA to pay the levy on your behalf (as detailed below). The process is designed to be as straightforward as possible.

HOW TO REGISTER SEVERAL ENTITIES (LEVY COLLECTION AGENTS)

Q. I am responsible for registering several entities. What are the changes for us?

The ODPA is aware that where an organisation is responsible for registering several controllers and/or processors a simpler registration process would be helpful.

The new regime allows organisations registered with and/or regulated by the Guernsey Financial Services Commission (GFSC) to act as '[Levy Collection Agents](#)' (LCAs) who are authorised to declare, and pay the levies for, other entities.

From 2021 the ODPA only requires the appointed LCA to declare the *number of entities* they are making a submission for and pay the combined levy. The LCA must maintain details, including company name etc. for each entity it registers and make this available to the ODPA upon request.

Q. My organisation wants to act as a levy collection agent (LCA). What do we need to know?

If you are registered with and/or regulated by the GFSC, you can act as an LCA. There are three steps to becoming an LCA:

1. You must first register yourselves as a controller/processor and declare your intention to act as an LCA.
2. During this registration process, you will have to indicate how many additional entities you are registering, in your role as an LCA. Each entity will incur a £50 levy and you will be asked to pay the combined total of your own registration fee plus the fee for each entity you have registered in your LCA role.
3. You will then need to issue each of the entities you have registered with a Certificate of Exemption, which must be presented to the ODPA upon request.

If you are acting as an LCA, you must maintain up to date and accurate records relating to the controllers and/or processors you are paying the levy for. This must include –

- Name of each entity
- A copy of the Certificate of Exemption you have issued to them
- The date you provided the entities with a copy of the Certificate of Exemption

These records must be retained for 6 years.

It is important to note that the LCA bears no legal liability or responsibility for the entity's data protection compliance they are acting for in this capacity. The ODPA will communicate directly with the controller/processor who is responsible for the data processing in the event of a query or complaint.

Q. What is a Certificate of Exemption?

A Certificate of Exemption is issued by the LCA to the entity who has agreed to use them to pay the annual levy. It may be required by the ODPA in the event of an enquiry.

HOW TO REGISTER VIA AN LEVY COLLECTION AGENT (LCA)

Q. I want my organisation to authorise a [levy collection agent](#) (LCA) to pay the levy on our behalf.**What do I need to know?**

An LCA must be registered with and/or regulated by the GFSC.

Where appropriately authorised, they are able to add one or more entities to their own registration and pay the levies due in one transaction. Only a declaration of the number of entities is required during the registration process which will be used to calculate the total levy payable. The ODPA will not collect company details but the LCA must maintain records of these and make them available to the ODPA upon request.

Once the levy has been paid by the LCA on your behalf, they must provide you with a *Certificate of Exemption*. This certificate means that you have completed all the statutory returns and payments required to the ODPA for that calendar year.

If you use an LCA, it is important to remember that all the legal responsibility as well as liability for data protection compliance still rests with you. LCAs are simply acting as payment gateway to assist with the administrative requirements for the regulated community.

In the event that the ODPA wishes to make any enquiries regarding the personal data processing activities of your organisation, the office will communicate directly with you and may require a copy of your Certificate of Exemption.

ABOUT THE ODPA

Q. What is the ODPA's role?

The Office of the Data Protection Authority is the independent regulatory authority for the purposes of *The Data Protection (Bailiwick of Guernsey) Law, 2017* and associated legislation.

Q. What does the ODPA do with the data it collects for the registration process?

Following changes to legislation in May 2019, the ODPA is no longer required to maintain a public-facing register of controllers and processors. Therefore, all registration data will only be processed internally for administrative and regulatory purposes.

THE POSITIVES

- ✓ The **registration process is simple**.
- ✓ Simplicity allows everyone to **focus their efforts on running their businesses/organisations well**.
- ✓ There is **no additional red tape** for most organisations.
- ✓ Funding from regulated community means **ODPA is truly independent** of States of Guernsey.
- ✓ Independent funding **safeguards Bailiwick's adequacy decision** from the European Commission – which is essential for our economy.
- ✓ **Two-tier fee is simple** for everyone to understand where they fit in.
- ✓ Because entire regulated community required to pay, the fee can be **set at a low level**.
- ✓ Simplicity and low cost **gives the Bailiwick a competitive advantage** to similar jurisdictions.

REMEMBER:

Routes to registration (from 2021)



I need to register and pay my annual levy to the ODPa - how do I do it?

First answer these 4 questions:

1. Do you employ **50+ Full Time Equivalent (FTE) staff**?
2. Are you **required by law to appoint a Data Protection Officer**?
3. Do you act as an **ODPA Levy Collection Agent**?
4. Are you a **non profit organisation**?



If you answered **YES to any** questions, you *must* take:

- **Route 1: Register direct with ODPa**



If you answered **NO to all** questions, you can *choose* from either:

- **Route 1: Register direct with ODPa**, or
- **Route 2: Register via an ODPa Levy Collection Agent**

Find out more at: odpa.gg/2021