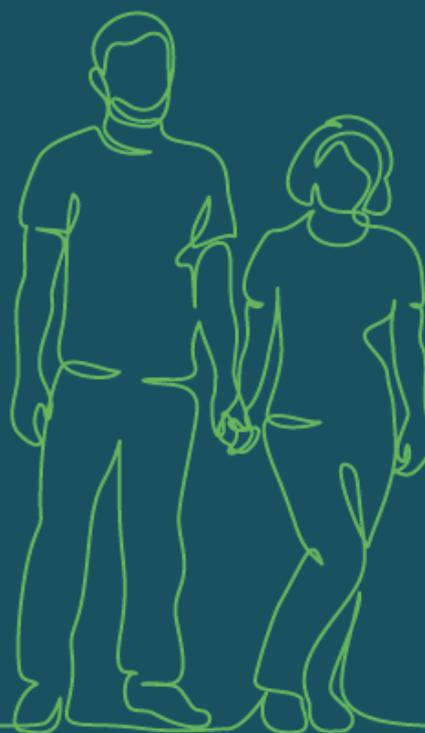




Everything you need to know about:
ODPA Registration & Levy Regime

(from January 2021)



This document gives detailed information about how the process of registering with the Office of the Data Protection Authority (ODPA) works from January 2021 onwards.



If you are new to this, please ensure you read the Background section carefully as it explains some technical terms and concepts you need to understand to follow the rest of this document.



We're here to help - please contact us on 01481 742074.

BACKGROUND

1. 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 are two routes to registering with the ODPA:

- Route 1: **Register directly with ODPA** (available to everyone)
- Route 2: **Register with an ODPA Levy Collection Agent** (LCA) (only available to certain controllers or processors)

2. 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.

3. 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.

4. 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 cost structure:

- **£2,000** annual levy for large organisations with **50 or more full-time-equivalent (FTE*) staff**.
- **£50** annual levy for **all other organisations**.
- **£0** annual levy for registered **charities and not-for-profit** organisations.

*See [Schedule 1D of the Regulations \(page 23\)](#), or **question 18 below** for details on how to calculate your total FTE.

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

5. Where will the money go?

The new fees regime allows 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.

6. 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.

7: 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.

8: What is ‘**processing**’ personal data?

‘Processing’ refers to pretty much anything a *controller or processor** 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.

*A controller or processor 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.

9. What are **controllers**? What are **processors**?

Controller: A controller is any entity (such as an organisation or person) who is **responsible for the decisions made about why and how** they use personal data about staff, customers, suppliers, or any other people.

Processor: This is any entity (such as an organisation or person) that is **given the task** of processing personal data **by a controller**. Processors do **not** determine the nature or the means of the processing, they just do what the controller tells them to do. If you are part of such an arrangement you need to have in place a Controller/Processor agreement.

It is not always straightforward to determine whether you are a controller or processor. For some processing you may be the controller (e.g. handling your own staff records), but you may be a processor for other processing (e.g. when another organisation instructs you to perform a task) – it all depends on **who is making the decisions** about how any given data is used.

WHAT YOU NEED TO DO

10. I am **currently registered** with the ODPa, 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 **during 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 **during January – February each year**.

11. 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 these [limited exemptions](#) please be aware that **these exemptions expire on 31 December 2020** (the only exception is using personal data for purely domestic/household purposes). You therefore need to register and pay **during 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 during January-February each year.

12. 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 you may be eligible to pay via an ODPa Levy Collection Agent (LCA) (see below for more details).

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

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

If you are a charity/not-for-profit (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 during January-February 2021 and annually thereafter, but will **not** be required to pay any levy.

14. How **often** do I have to pay the levy?

Following your initial registration fee, payable in January-February 2021 an annual levy (of either £50 or £2,000 depending on your organisation's size) will be due during January - February of each following year. You will be able to pay this online.

Remember that all registered charities and not-for-profit organisations do **not** have to pay either the initial registration fee or the annual levy.

15. What if I set up a **new business in, say, July 2021** (i.e. outside of the annual levy collection period)? Do I need to register directly at that point?

No, you don't unless you answer yes to any of these four 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 (States of Guernsey Deputies are included under 'non-profits')**?

If you answer yes to any of the above questions you must register directly with the ODPA when you first set up your business.

If you answer no to all the above questions [you can pay your registration fee \(and subsequent annual levies\) via an ODPA Levy Collection Agent](#) (LCA) – you just need to set this up **by 31 December of your first year of trading**. Alternatively you can **choose** to register directly with the ODPA during January-February of the year **following** your first year of trading.

Please remember that regardless of when you register, you are immediately required to [meet your legal obligations around taking care of people's data well](#).

16. 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 controllers or processors that **employ 50 or more FTEs**
- All controllers or processors the Law requires to appoint a [Data Protection Officer](#)
- All organisations who are acting as an ODPA **levy collection agent**
- All **charities, not-for-profit** organisations, and **States of Guernsey Deputies** (all of whom pay nothing)

17. What is the difference between the ODPA '**registration fee**' and the ODPA '**annual levy**'?

There are two differences:

1. You only pay the **registration fee once**, the very first time you register with the ODPA, all subsequent years you pay the 'annual levy'.
2. You can pay the **registration fee at any point during the year** that you start processing personal data, whereas the **annual levy can only be paid during January – February** (the annual levy collection period).

18. The fee is based on how many staff I have - how do you **define what 'full time employee'** (FTE) means?

To calculate how many of your employees would be classed as full time employees (FTEs) please refer to the

definition within [Schedule 1D of the Regulation \(page 23\)](#) which is **reproduced below** with emphasis added for clarity. Please note that any individuals that work with you on a consultancy basis (i.e. your contract is with the organisation they are an employee of, not them as an individual) are not classed as your employees:

- **Employee** – is defined as **an individual** who has entered into or who works under (or, where the employment has ceased, who worked under) a **contract of service for the employer**, whether express or implied and whether written or oral.
- **Full time employee** can mean either:

a) an **employee** who works or who under a contract of service is required to work for the employer 27 hours or more per week,

or

b) a **number of employees** who do not individually fall within subparagraph (a) but who collectively work or who collectively under their contracts of service are required to work for the employer, 27 hours or more per week in the aggregate. ¹

2. An individual who works or who under his contract of service is required to work for an employer is to be regarded as an employee of the employer whether the contract of service the individual has entered into or works under was made with the employer or, where the employer is a company, with an associated company of the employer.

3. For the avoidance of doubt –

(a) the hours worked by an employee includes any hours worked wholly or mainly outside the Bailiwick of Guernsey,

(b) a director of the employer in his capacity as director is not to be regarded as a full time employee of that employer unless the director is, in that capacity, an employee within the meaning of paragraph 1 of this schedule.

19. 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 during January-February 2021 or alternatively use an LCA (as detailed below).

20. 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.

21. I am a States of Guernsey body, what does this mean for me?

Many States of Guernsey bodies are encompassed in a single levy to be paid at the beginning of the year – [see details of the relevant levy in Schedule 1 of the Regulations \(page 14\)](#). If this covers you, there will be no need to register as this will be handled separately. Please refer to [Schedule 1B of the Regulations \(page 20\)](#) for more

¹ (e.g. you may employ 3 part-time people who work 10 hours, 10 hours, and 7 hours respectively – this would add up to 1 FTE.)

details of those bodies covered by that levy and contact the States of Guernsey's [Data Protection Team](#) in the first instance if you have any queries.

22. I am a States of Alderney body, what does this mean for me?

Many States of Alderney bodies are encompassed in a single levy to be paid at the beginning of the year – [see details of the relevant levy in Schedule 1 of the Regulations \(page 14\)](#). If this covers you, there will be no need to register as this will be handled separately. Please refer to [Schedule 1A of the Regulations \(page 18\)](#) for more details of those bodies covered by that levy.

23. I am a Sark public entity, what does this mean for me?

Many Sark public entities are encompassed in a single levy to be paid at the beginning of the year – [see details of the relevant levy in Schedule 1 of the Regulations \(page 14\)](#). If this covers you, there will be no need to register as this will be handled separately. Please refer to [Schedule 1C of the Regulations \(page 21\)](#) for more details of those bodies covered by that levy.

24. I am responsible for paying the annual levy for several controllers or processors. What are the changes for us?

The ODPA is aware that where an organisation is responsible for paying the annual levy for several controllers and/or processors a simpler 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 controllers or processors.

From 2021 the ODPA only requires the appointed LCA to declare the *number of controllers or processors* they are making a submission for and pay the combined levy. The LCA must maintain details, including company name etc. for each controller or processor it pays on behalf of and make this available to the ODPA upon request.

25. I want to outsource the payment of the levy so I can focus on compliance – how do I do this?

You need to [appoint an ODPA Levy Collection Agent](#) to pay the fee on your behalf.

ABOUT THE ODP

26. What is the ODP'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.

27. What does the ODP do with the data it collects for the registration process?

Following changes to legislation in May 2019, the ODP 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.
- ✓ **Fee structure 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:

Registration (from 2021)





I need to register and pay my annual levy to the ODP - 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 ODP**

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

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

Find out more at: odpa.gg/2021