



THE OFFICE OF THE

# Data Protection Authority

## The Data Protection (Bailiwick of Guernsey) Law, 2017 ("the Law")

### Exemptions to Registration

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#### Guidance on exemption

The previous Data Protection Law that was replaced in 2018, provided a number of exemptions to registering with the ODP. These exemptions meant there was no need to register but every controller (including business, charity, organisation and in some circumstances individual) *still had to work within the Law and must still do so now*.

These exemptions *to registration* were extended until the end of 2019. After that date every controller must register with the ODP; there will not be any exemptions.

The exemptions currently apply to three groups of entities

1. those that only process data that is for accounts and record-keeping for **core business purposes** for staff administration and to market their own goods or services
2. those who only process data **under instructions** given by another entity (processors)
3. those who have **charity** or **not-for-profit** status

#### What happens if I'm unsure whether I'm exempt or not?

It might be challenging to work out whether any of these exemptions apply to you so below are some examples and further explanation.

#### Exemption 1 – core business purposes

Exemption on the grounds of accounts and record keeping processing for core business purposes only applies to a **limited** number of entities. These could include very small traders or businesses whose only record keeping is of who they owe money to and who owes them money, in other words: simple accounts.

If the only personal data the controller processes is used to administer payroll records, recruitment and HR/personnel records, then it will be exempt from registration.

If a controller carries out only marketing or advertising **of their own goods or services** they are also exempt from registration.

As soon as personal data is used for **any other purpose** then the business, person or entity is no longer exempt.

For example, a controller may carry out advertising and marketing to promote the services that it offers and remain exempt. However, if it promotes the services of anyone else the exemption does not apply, and it must register.

A controller is exempt from registration where any or all of the above purposes for processing apply and personal data is not processed for any other purpose.

## **Exemption 2 - processing data under instructions given by another entity**

To understand whether you are exempt because you process data under instruction from someone else it may help to understand the difference between a **controller** and a **processor**.

A **processor** of data is given that task of processing personal data by a **controller**. The difference between a processor and a controller is that a processor does not decide how the data is used; they just perform the task as instructed by the controller.

A processor might be a shredding company that takes away the hard copy of data from you and processes it by shredding it on your behalf.

Similarly, an IT company that you employ to provide IT infrastructure and support but makes no decisions themselves about how and why the personal data is processed is a processor.

It's worth noting that in both examples the processor must still be following the Law where it applies to processors.

Essentially, every processor has a controller who is telling them what to do *with* or *to* the data and a contract explaining this relationship must be in place.

## **Exemption 3 - charities or not-for-profits**

At the moment any registered charities or non-profit organisations/entities are exempt from registering with the ODPA, if they only handle the data of members or people with whom they have regular contact.

## **Don't forget:**

**There is no exemption to adhering to the Law; just to registering with the ODPA.**

**The exemptions to registration expire at the end of 2019 when all entities, including those listed above, will have to register.**