



THE OFFICE OF THE

# Data Protection Authority

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

### Special Category Data

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#### At a glance

- [Special category data](#) is personal data which the Law recognises as more sensitive, and is therefore given higher levels of protection.
  - In order to lawfully process special category data, you must identify a lawful processing condition from either Part II or Part III of Schedule 2 of the Law.
  - You must determine and document the condition for processing special category data before you begin any processing under the Law.
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#### What is special category data?

"Special Category Data" means –

- personal data revealing an individual's –
  - Racial or ethnic origin
  - Political opinion
  - Religious or philosophical belief
  - Trade union membership
- genetic data
- biometric data

- health data
- personal data concerning an individual's sex life or sexual orientation
- criminal data

### **What's new?**

Special category data is broadly similar to the concept of sensitive personal data under the 2001 Law. The requirement to identify a specific condition for processing this type of data is also very similar. The standards that apply to ensure compliance with the Law remain broadly similar but are enhanced in a number of areas. It is important to ensure you read, understand and act upon the new conditions that apply.

### **What's different about special category data?**

It is recognised that this type of data could create more significant risks to a person's fundamental rights and freedoms, for example, by putting those persons at risk of unlawful discrimination.

### **What are the conditions for processing special category data?**

The conditions are listed in Parts II and III of Schedule 2 which are replicated below:-

#### **Part II**

- The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.
- The processing is necessary for the controller to exercise any right or power, or perform or comply with any duty, conferred or imposed on the controller by an enactment.
- The processing is necessary in order to comply with an order or a judgment of a court or tribunal having the force of law in the Bailiwick.
- (a) The processing is necessary for a health or social care purpose and is undertaken by –
  - (i) a health professional, or
  - (ii) a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if the person were a health professional.
- (b) In subparagraph (a) –  
"health or social care purpose" includes the purpose of –

- (i) preventative or occupational medicine,
  - (ii) the assessment of the working capacity of an employee or worker,
  - (iii) medical diagnosis,
  - (iv) the provision of medical, health or social care or treatment, or
  - (v) the management of medical, health or social care systems and services.
- (a) The processing –
  - (i) is necessary for reasons of public health, for example –
    - (A) for protection against serious threats to public health,
    - or
    - (B) to ensure high standards of quality and safety for health care, medicinal products or medical devices, and
  - (ii) is carried out with appropriate safeguards for the significant interests of data subjects.
- (b) In subparagraph (a)(i)(B) –
  - "medical device" means –
    - (i) any medical device, within the meaning of Article 1(2)(a) of Council Directive 93/42/EEC of 14 June 1993 concerning medical devices, or
    - (ii) any accessory, within the meaning of Article 1(2)(b) of that Council Directive, and
  - "medicinal product" has the meaning given by section 133 of the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008
- The processing is necessary –
  - (a) for the purpose of, or in connection with –
    - (i) any legal proceedings (including prospective legal proceedings), or
    - (ii) the discharge of any functions of a court or tribunal acting in its judicial capacity,
  - (b) for the purpose of obtaining legal advice, or
  - (c) otherwise for the purposes of establishing, exercising or defending legal rights.
- The processing is necessary for –
  - (a) the administration of justice, or
  - (b) the exercise of any function of the Crown, a Law Officer of the Crown, the States or a public committee.
- The processing –
  - (a) is in the context of the legitimate activities of any person which –
    - (i) is not an individual,
    - (ii) is not established or conducted for profit, and
    - (iii) exists for political, philosophical, religious or trade-union purposes,
  - (b) is carried out with appropriate safeguards for the significant interests of data subjects,
  - (c) relates only to individuals who either are members of the body or association or have regular contact with it in connection with its purposes, and
  - (d) does not involve disclosure of the personal data to a third party without the consent of the data subject.

- The processing is necessary for a historical or scientific purpose.
- The following condition is satisfied if the condition in subparagraph (a) is satisfied, subject to subparagraphs (b) and (c) –

(a) The personal data processed is of a category specified in the left-hand column of the table below, and the processing is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between the groups of people specified in the righthand column of that table in relation to each category of personal data, with a view to enabling such equality to be promoted or maintained:

<b>Category of personal data</b>	<b>Groups of people (in relation to a category of personal data)</b>
Personal data revealing racial or ethnic origin	People of different racial or ethnic origin
Personal data revealing religious or philosophical beliefs	People holding different religious or philosophical beliefs
Health data	People with different states of health
Personal data concerning an individual's sexual orientation	People of different sexual orientation

(b) Processing does not satisfy the condition in subparagraph (a) if it is carried out–

- (i) in order to make a decision, or facilitate or allow a decision to be made, with respect to a particular data subject, or
- (ii) in such a way that substantial damage is, or is likely to be, caused to any data subject.

(c) Processing does not satisfy the condition in subparagraph (a) if–

- (i) a data subject has given notice in writing to the controller requiring the controller not to process the personal data, and has not given notice in writing withdrawing that requirement,
- (ii) the notice gave the controller a reasonable period in which to stop processing such data, and
- (iii) that period has ended.

- The processing is –
  - (a) authorised by regulations made by the Committee for this purpose and carried out in accordance with those regulations, or
  - (b) authorised or required by any other enactment and carried out in accordance with the enactment.

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### Part III

- The data subject has given explicit consent to the processing of the personal data for the purpose for which it is processed.
- The processing is necessary to protect the vital interests of the data subject or any other individual who is a third party, and –
  - (a) the data subject is physically or legally incapable of giving consent, or
  - (b) the controller cannot reasonably be expected to obtain the explicit consent of the data subject.

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There are circumstances where special authorisation for processing has been granted by the Committee for Home Affairs. These can be used instead of a lawful processing condition, but it must be documented why you are relying on the special authorisation and all conditions must be adhered to.

<b>Personal data</b>	<b>Controller</b>	<b>Purposes</b>
Special category data	Any person acting for or on behalf of – (a) Ofsted, or (b) a person, service or institution in the Bailiwick being inspected by or on behalf of Ofsted	Enabling or facilitating an inspection relating to any person, service or institution in the Bailiwick carried out by or on behalf of Ofsted further to an approved arrangement
<b>Conditions</b>		
The approved arrangement must contain safeguards in relation to any personal data processed for the purpose of the inspection.		

<b>Personal data</b>	<b>Controller</b>	<b>Purposes</b>
Special category data	Any person providing confidential counselling, advice, support or other services to the data subject	Providing or delivering services of the kind specified in column 2
<b>Conditions</b>		
The processing – (a) needs to be carried out without the data subject's consent – (i) because the data subject is physically or legally incapable of giving consent,		

- (ii) because the controller cannot reasonably be expected to obtain the consent of the data subject, or
- (iii) in order not to prejudice the purpose in listed above, and
- (b) is in the public interest.

<b>Personal data</b>	<b>Controller</b>	<b>Purposes</b>
Health data or criminal data	Any person carrying on insurance business, or acting for or on behalf of such a person	Enabling or facilitating the person to carry on insurance business
<p><b>Conditions</b></p> <p>The processing –</p> <ul style="list-style-type: none"> <li>(a) is necessary for a purpose relating to an objective that is in the public interest, and</li> <li>(b) where condition A applies, satisfies condition B.</li> </ul> <p>Condition A applies where-</p> <ul style="list-style-type: none"> <li>(a) the processing is not carried out for the purposes of measures or decisions with respect to the data subject, and</li> <li>(b) the data subject does not have and is not expected to acquire – <ul style="list-style-type: none"> <li>(i) rights against, or obligations in relation to, an insured person under an insurance contract entered into by or on behalf of the controller, or</li> <li>(ii) any other rights or obligations in connection with such a contract.</li> </ul> </li> </ul> <p>Condition B is satisfied if the controller –</p> <ul style="list-style-type: none"> <li>(a) cannot reasonably be expected to obtain the consent of the data subject, and</li> <li>(b) the controller is not aware of the data subject withholding consent</li> </ul>		

<b>Personal data</b>	<b>Controller</b>	<b>Purposes</b>
Health data relating to a data subject who is the parent, grandparent, great grandparent or sibling of a member of a pension scheme.	Any person making determinations in connection with eligibility for, and benefits payable under, a pension scheme	Enabling or facilitating the person to make determinations of the kind specified in column 2
<p><b>Conditions</b></p> <p>The processing –</p> <ul style="list-style-type: none"> <li>(a) needs to be carried out without the data subject's consent – <ul style="list-style-type: none"> <li>(i) because the data subject is physically or legally incapable of giving consent, or</li> <li>(ii) because the controller cannot reasonably be expected to obtain the consent of the data subject, and</li> </ul> </li> <li>(b) does not support measures or decisions affecting the significant interests of the data subject.</li> </ul>		

<b>Personal data</b>	<b>Controller</b>	<b>Purposes</b>
Criminal data	Any person	A purpose in connection with any of the following – (a) the recruitment of an individual as an employee, (b) the continued employment of an individual, (c) any contract for the provision of services to the controller by another person, or (d) the provision (for payment or not) of goods, facilities or services to the public or any section of the public
<b>Conditions</b> The processing – (a) is required or authorised by law, or (b) in the particular circumstances, is justified as being in the public interest.		

<b>Personal data</b>	<b>Controller</b>	<b>Purposes</b>
Special category data	Any person	Exercising any right or power, or performing or complying with any duty, conferred or imposed by law on the controller in connection with employment

<b>Personal data</b>	<b>Controller</b>	<b>Purposes</b>
Special category data	An elected representative	Carrying out any function as an elected representative
<b>Conditions</b> The processing – (a) is carried out pursuant to a request made by the data subject to the elected representative to take action on behalf of the data subject or any other individual, and		

(b) is necessary for the purposes of, or in connection with, the action reasonably taken by the elected representative pursuant to that request.

<b>Personal data</b>	<b>Controller</b>	<b>Purposes</b>
Special category data	An elected representative	Carrying out any function as an elected representative
<p><b>Conditions</b></p> <p>The processing –</p> <ul style="list-style-type: none"> <li>(a) is carried out pursuant to a request made by an individual other than the data subject to the elected representative to take action on behalf of the data subject or any other individual,</li> <li>(b) is necessary for the purposes of, or in connection with, the action reasonably taken by the elected representative pursuant to that request, and</li> <li>(c) needs to be carried out without the data subject's consent – <ul style="list-style-type: none"> <li>(i) because the data subject is physically or legally incapable of giving consent,</li> <li>(ii) because the controller cannot reasonably be expected to obtain the consent of the data subject,</li> <li>(iii) in order to protect or safeguard the significant interests of another individual, in any case where the data subject has unreasonably withheld consent, or</li> <li>(iv) in order not to prejudice the action taken by the elected representative pursuant to that request.</li> </ul> </li> </ul>		

<b>Personal data</b>	<b>Controller</b>	<b>Purposes</b>
Special category data	Any person	Responding to a communication to the controller made by an elected representative pursuant to a request made by the data subject
<p><b>Conditions</b></p> <p>The processing –</p> <ul style="list-style-type: none"> <li>(a) consists of a disclosure of special category data to the elected representative, and</li> <li>(b) the special category data is relevant to the communication specified above.</li> </ul>		

<b>Personal data</b>	<b>Controller</b>	<b>Purposes</b>
Special category data	Any person	Responding to a communication to the controller made by an elected representative pursuant to a request made

		by an individual other than the data subject
<p><b>Conditions</b></p> <p>The processing –</p> <ul style="list-style-type: none"> <li>(a) consists of a disclosure of special category data to the elected representative,</li> <li>(b) the special category data is relevant to the communication specified above, and</li> <li>(c) needs to be carried out without the data subject's consent – <ul style="list-style-type: none"> <li>(i) because the data subject is physically or legally incapable of giving consent,</li> <li>(ii) because the controller cannot reasonably be expected to obtain the consent of the data subject,</li> <li>(iii) in order to protect or safeguard the significant interests of another individual, in any case where the data subject has unreasonably withheld consent, or</li> <li>(iv) in order not to prejudice any action taken by the elected representative pursuant to that request.</li> </ul> </li> </ul>		

<b>Personal data</b> Special category data	<b>Controller</b> Any person	<b>Purposes</b> The prevention, detection or investigation of any unlawful act or omission
<p><b>Conditions</b></p> <p>The processing –</p> <ul style="list-style-type: none"> <li>(a) needs to be carried out without the data subject's consent in order not to prejudice the purpose in listed above, and</li> <li>(b) is in the public interest.</li> </ul>		

<b>Personal data</b> Any personal data	<b>Controller</b> Any controller	<b>Purposes</b> Publication of a judgment or other decision of a court or tribunal
<p><b>Conditions</b></p> <p>The processing –</p> <ul style="list-style-type: none"> <li>(a) consists of the publication of such a judgment or other decision, or</li> <li>(b) enables or facilitates the publication of such a judgment or decision.</li> </ul>		

<b>Personal data</b> Special category data	<b>Controller</b> Any person discharging a protective function	<b>Purposes</b> Properly discharging the protective function
<p><b>Conditions</b></p>		

The processing –  
 (a) needs to be carried out without the data subject's consent in order not to prejudice the purpose listed above, and  
 (b) is in the public interest.

<b>Personal data</b>	<b>Controller</b>	<b>Purposes</b>
Special category data	A police officer	Exercising or performing any function conferred or imposed on the police officer by any rule of law or customary law

<b>Personal data</b>	<b>Controller</b>	<b>Purposes</b>
Special category data	Public authority	Identifying or assessing the risk to the Bailiwick of money laundering, terrorist financing, breaches of international sanctions or other forms of financial crime.

**Conditions**  
 The processing needs to be carried out in order to maintain the reputation and standing of the Bailiwick.

## Checklist

- We have identified all special category data that we process or intend to process.
- We have identified and documented which condition we are relying on to ensure the lawfulness of the processing.
- We have considered the management of special category data and how it impacts other obligations such as security, impact assessments and breach handling.