

# GUIDANCE NOTE

## **Sanctions**

Data Protection Authority (Jersey) Law 2018

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# INTRODUCTION

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1. The DPJL is based on principles of 'good information handling'. These principles give people (the data subjects) specific rights in relation to their personal information and place certain obligations on those organisations that are responsible for processing it.
2. The Data Protection Authority (Jersey) Law 2018 ("**DPAJL**") establishes the Data Protection Authority (the Authority (which will replace the Office of the Information Commissioner). The Information Commissioner (the **Commissioner**) is the Chief Executive Officer of the Authority.
3. This guidance explains about the various sanctions an Authority can take and when they may take them and who may be subject to them.

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# OVERVIEW

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- This guidance applies to data controllers (and in certain circumstances, processors), as defined under Art.1 (1) of the DPJL. It focuses on the various sanctions available to the Data Protection Authority.
- The DPJL and DPAJL come into force on 25 May 2018. However, certain data is exempt from full compliance until 25 May 2019 (this relief applies to processing which was already underway immediately before 25 May 2018) and certain other requirements are subject to transitional relief.
- The purpose of sanctions is to control and manage breaches and potential breaches of personal data with the aim of protecting data subjects from harm and/or further harm.
- Processing not falling within the scope of the transitional provisions will be subject to the provisions of the DPJL and DPAJL immediately and will not be eligible for transitional relief. Data controllers may find that within their overall processing activities, processing of some personal data attracts transitional relief whereas some will not. Different requirements may therefore apply to different data. Data controllers therefore need to ensure that their working practices and systems take account of this. Where this causes practical difficulties, data controllers may find it simpler to observe the requirements of the DPJL and DPAJL immediately.
- Data controllers should be taking a proactive approach to bring their systems, documentation and procedures in line with the requirements of the DPJL and DPAJL as soon as possible rather than postponing compliance with the new regime until expiry of any transitional relief.
- This guidance will seek to explain what sanctions the Authority has available in law, when the Authority may apply them and who is subject to them. The guidance will also explain how a recipient of a sanction(s) will need to handle such circumstances and what they are required to do.



# SANCTIONS

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## What are the sanctions?

4. The DPAJL has certain sanctions as set out in Article 25(1) of the Law. These sanctions can be made against a controller or a processor by the Authority when they believe a breach has been made or is likely to be made by a controller or a processor. The Authority is not limited to making just one sanction against a controller or a processor, it may feel the need to issue them all. They are:
  - a. A reprimand
  - b. A warning that the recipient has or is likely to process data in a way which is unlawful
  - c. An order, which will be explained in more detail below.

### *Reprimand*

5. The DPAJL does not specify the conditions upon which a reprimand may be issued, however will most likely take the form of a notice, and may accompany an administrative fine or a formal undertaking by the controller or processor to meet future compliance with any part of the DPJL or DPAJL.

### *Warning*

6. This sanction applies to incidences where it appears to the Authority that the intended processing or other act or omission is likely to contravene the DPJL or DPAJL. Such warnings may be issued by way of a formal notice in advance of any intended processing.

### *Order*

7. This refers to a formal notice of enforcement and can order any or all of the following:
  - a. bring specified processing operations into compliance with the Data Protection Law, or take any other specified action required to comply with that Law, in a manner and within a period specified in the order;
  - b. notify a data subject of any personal data breach;
  - c. comply with a request made by the data subject to exercise a data subject right;
  - d. rectify or erase personal data in accordance with Article 31 or 32 of the Data Protection Law;
  - e. restrict or limit the recipient's processing operations, which may include –
    - i. temporarily restricting processing operations in accordance with Article 33 of the Data Protection Law,
    - ii. ceasing all processing operations for a specified period or until a specified action is taken, or
    - iii. suspending any transfers of personal data to a recipient in any other jurisdiction; and
  - f. notify persons to whom the personal data has been disclosed of the rectification, erasure or temporary restriction on processing, in accordance with Articles 31 to 33 of the Data Protection Law.
8. Nothing in (d), (e) or (f) above prevents an order by the Authority to comply with a request made by the data subject to exercise a data subject right.



9. An order by the Authority may set deadlines for meeting compliance with the order, or a period of time between which compliance with the order must be met. The Authority can also revoke or amend an order by giving written notice to the recipient.
10. Failure to comply with the order, or failure to comply with the order within the specified timeframes is a criminal offence under the DPAJL.

## When will a sanction be issued?

11. A sanction may be issued by the Authority if they determine that a controller or processor has breached any part of the DJL or DPAJL. The Authority will consider many factors before determining a breach and issuing a sanction. These factors may include (but are not limited to) the level of damage or distress suffered, or likely to be suffered by affected data subjects, the number or potential number of data subjects affected, the severity of the breach, the technical and organisational measures in place at the time of the breach, and the steps already taken by the controller or processor to rectify the breach.



### Example 1

*ABC Limited have failed to respond to a subject access request under Art.28 of the DPJL. This is the third time this has happened, and on the first occasion the controller signed a formal undertaking to ensure future compliance.*

*In this case the Authority may make an order instructing the controller to comply with the request by a certain date and to implement a robust policy and procedure for dealing with subject access requests in the future.*

*The order may also instruct the controller to notify the data subject that they have been found to be in breach by the Authority.*

### Transitional provisions

12. Where an Enforcement Notice under Art.40 of the 2005 Law has been served upon a data controller immediately before the commencement of the DPAJL, the Enforcement Notice will be effective as if it was an order made under the DPAJL.
13. Similarly, the Authority can make a retrospective order under the DPAJL if immediately prior to the commencement of that law the Commissioner had reasonable grounds to suspect that the data protection Principles under the 2005 Law had been contravened, or the controller had failed to comply with a subject access request under the 2005 Law.

## Who may be issued a sanction?

14. The Authority may issue sanctions against either a controller or a processor under the DPAJL.



# MORE INFORMATION

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15. Additional guidance is available on our guidance pages with more information on other aspects of the DPJL and DPAJL.
16. This guidance has been developed drawing on the Commissioner's experience. It will be reviewed and considered from time-to-time in line with new decisions by the Commissioner and/or the Jersey courts.
17. It is a guide to our general recommended approach, although each individual case will likely be different and will be decided on the particular circumstances of the case.
18. If you need any further information about this, or any other aspect of the DPJL or DPAJL, please contact us or visit our website [www.jerseyoic.org](http://www.jerseyoic.org)

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