

APPLICATION FORM FOR ACCREDITATION AS A DATA PROTECTION AUTHORITY

Application to the Credentials Committee for accreditation as a data protection authority pursuant to the resolutions adopted at the 23<sup>rd</sup> International Conference of Data Protection and Privacy Commissioners at Paris on 25<sup>th</sup> September 2001.

Notes:

- (a) Please complete application in French or English.
- (b) Please keep answers brief and to the point.
- (c) Please ensure that all 33 questions are answered
- (d) If you retype the form, please include the numbered questions with your answers. It is possible to avoid such retyping by getting the electronic application form in French or in English upon request by e mail at [credentials@privacy.org.nz](mailto:credentials@privacy.org.nz) .

Details of applicant

1. Name and postal address of authority

Isle of Man Data Protection Registrar  
 PO Box 69  
 Douglas  
 Isle of Man  
 IM4 7JG  
 United Kingdom

2. Contact person for this application:

- (a) Name: Mrs Lynn Keig, Isle of Man Data Protection Registrar
- (b) Email address: ~~lynn.keig@data.gov.im~~
- (c) Direct telephone number: ~~+44 (0) 1624 891030~~
- (d) Fax contact: ~~+44 (0) 1624 891030~~

Type of application

3. The application is for accreditation as:

- (a) national Authority YES
- (b) sub-national Authority NO
- (c) Authority within an international, if yes which one... ..NO

## Description of applicant

4. Description of Authority (e.g. commissioner, commission, board etc)

**Registrar**

5. Is the Authority a public body? **YES**

6. Geographical jurisdiction: **Isle of Man**

7. Sectoral coverage (i.e. does the applicant's jurisdiction cover the entire public and private sectors? If only part of a sector or if there are significant activities not covered, please specify)

**My jurisdiction extends to all data users and computer bureaux whether in the public or private sectors.**

8. Is the role of the Authority mainly concerned with data protection and privacy?

**YES, solely.**

## Legal basis

9. Title of law under which the Authority is constituted

**The Isle of Man Data Protection Act 1986**

10. Is this principally a data protection law? **YES, solely.**

11. Status of the law (e.g. statute, regulation, executive order): **Statute**

12. Which body made the law?

**Tynwald, the Parliament, i.e. legislature, of the Isle of Man**

13. What body has the power to amend or revoke the law?

**Tynwald**

## Autonomy and independence

14. Who appoints member(s) of the Authority? (Please explain if a different process applies to the presiding member from other Authority members in this question and in subsequent questions.)

The Registrar is appointed by the "Governor in Council", i.e. the Island's Lieutenant Governor sitting with the Council of Ministers (Cabinet).

15. What process is followed?

Candidates are interviewed by representatives of the Council of Ministers who make a recommendation upon the appointee to the Council. The Council will confirm, or not, the recommendation which must then be passed to the Lieutenant Governor of the Isle of Man for his concurrence, or refusal. When all concur, the post is offered to the successful candidate.

16. For what term are appointments made?

Five years, although section 3(5) and Schedule 2 of the Act provides that "upon expiry of such term [the Registrar] shall be eligible for re-appointment".

17. Does the law under which the Authority operates explicitly state that it acts independently?

YES, in as much as section 3(1)(a) of the Act states "For the purposes of this Act there shall be an officer known as the Isle of Man Data Protection Registrar".

18. May the member(s) be removed before expiry of their term? YES

19. If yes, who may remove members of the Authority before expiry of their term?

In accordance with section 3(5) and Schedule 2 of the Act, the Registrar may only be removed from office upon the passing of a resolution by Tynwald, the Island's Parliament.

20. Are there limited reasons specified in the statute, or in another law, providing the permitted grounds for removal?

In line with the Island's other senior officers, the Registrar's Contract of Employment, which is enforceable under the Isle of Man Employment Act 1990, specifies very limited grounds for removal from office (see question 21). There are no ground for removal specified in the Act.

21. What are the grounds for removal?

Gross misconduct, bankruptcy, inefficiency or capability, ill-health (where there is not a reasonable prospect of recovery and return to duty), unsatisfactory conduct and redundancy.

22. Does the Authority possess the following powers (briefly describe and give statutory references)

(e) to initiate an investigation with seeking provision: YES

Under section 35(2) of the Act, the Registrar is required to investigate complaints which appears to her to raise a matter of substance and to have been made without undue delay and by a person directly affected. This section also requires the Registrar to notify the complainant of the result of her consideration and of any action which she intends to take. In addition, section 16 and Schedule 4 grant the Registrar powers of entry and inspection by way of the issue of warrants by one of the Island's Deemsters (Judges).

(f) to report to the head of State, head of Government or legislature YES

Under section 35(5) of the Act, the Registrar is required to report annually to Tynwald upon the performance of her functions under the Act and permits the Registrar from time to time to report to Tynwald upon those functions as she thinks fit.

(g) make public statements YES

Under section 35(3) of the Act, the Registrar shall arrange for the dissemination, in such form and manner as she considers appropriate, of such information as it may appear to her expedient to give to the public about the operation of the Act, and other matters within the scope of her functions under the Act. In addition to issuing documentation aimed at informing the public upon the operation of the Act, aiding compliance with the Act and assisting the public in exercising their rights under the Act, the Registrar regularly participates in radio and newspaper interviews and issues both news and public notices as appropriate. The Registrar also uses her annual report, which she is required to lay before Tynwald annually in accordance with section 35(5) of the Act, to raise awareness of the Act and topical issues.

Note: questions 22(a) to (d) inclusive were not included in this on-line application form.

23. Does the Authority (and its staff) have immunity from legal suit for actions performed in the course of their duties? YES

24. Applicants may list any other measures set out in the statute or in other laws which guarantee the Authority's independence (for example if the law provides specifically that the Authority's finances are protected).

The independence of the Office of Registrar is further guaranteed by the appointment of an independent Data Protection Tribunal. This Tribunal is established under section 3(1)(b) and Schedule 2 of the Act to appeal decisions of the Registrar. The Chairman and Deputy Chairman of the Tribunal have to be barristers, advocates or solicitors, in each case of not less than 7 years standing.

This Tribunal may consider appeals against any refusal by the Registrar of an application by a data user for registration or for the alteration of registered particulars and against any enforcement notice, de-registration notice or transfer prohibition notice with which a data user has been served. Furthermore, appeals upon a point of law against a decision of this Tribunal may be made to the High Court.

Additionally, the Registrar's independence is guaranteed by the law providing specifically for the funding to operate the office of the Registrar. In accordance with section 3(5) and Schedule 2 of the Act, Tynwald will provide moneys for the payment of the Registrar's salary and all operating expenses.

#### Consistency with international instruments

25. Does the Authority explicitly implement any international instrument (for example if the law under which the Authority operates specifies that it implements such international instrument)? **YES**

If "yes", which of the following does it principally implement?

- (a) OECD Guidelines (1980): **YES**  
(b) (i) Council of Europe Convention No 108 (1981): **YES**  
(ii) Council of Europe Additional Protocol (8 November 2001): **YES**

**Note: in exercise of the powers conferred on the Council of Ministers by section 36 of the Act The Data Protection (Convention Functions) Order 1994 (SD. No. 483/94) the Isle of Man Data Protection Registrar is the designated authority in the Island for the purposes of Article 13 of the European Convention and shall provide assistance in response to requests made under Article 14 of that Convention.**

- (c) UN Guidelines (1990): **YES**  
(d) EU Directive (1995): **YES**

**Note: The Data Protection Act 1986 implements this Directive in as much as it provides the "core" data protection "content principles" and "procedural/enforcement requirements" identified by the Working Party established under Article 29 of the Data Protection Directive as indicating compliance with this Directive (see WP12 (5025/98) Working document: "Transfers of personal data to third countries: Applying Articles 25 and 26 of the EU data protection directive").**

26. Does the law instead, or additionally, implement any general or specific international instrument? (If so, list the international body and the instrument): **Not applicable.**
27. Have significant questions been raised about the extent to which the law is consistent with the international instruments which are claimed to be implement in answer to

questions 25 and 26? (Applicants should supply further information to assist the Committee including a description of any measures under way to address these inconsistencies.)

In January 1999 an application was made for the adequacy of the Isle of Man Data Protection Act 1986 to be assessed by the European Commission for compliance with EU Directive 95/46. For whatever reasons, this matter was deferred and deferred and no decision taken upon the adequacy of the Act. It is understood that in view of the fact that the Isle of Man is to implement the Directive in full, by repealing the existing Act in its entirety and bringing into force an Act which "mirrors", subject to minor amendments, the UK Data Protection Act 1998, no decision will be taken by the Commission upon the adequacy of the Island's data protection legislation until such time as the new legislation is made available to them.

The Data Protection Bill 2002 was read in the House of Keys (lower house of Parliament) for the first time on 12 March 2002 and is scheduled to be read for the first time in the Legislative Council (upper house of Parliament) on 25 June 2002. A coming into force date of 01 January 2003 is thought to be realistic in these circumstances.

#### Appropriate functions

28. Does the Authority possess functions in any of the following areas (briefly describe and give statutory references):

(a) compliance (e.g. audit, inspection) YES

Under section 7(2) of the Act the Registrar has the power to decline to include in the public register of data users and computer bureaux applications and amendments which she adjudges to be incomplete to the extent they would not give sufficient information as to the matters to which they relate or if they indicate that the applicant is likely to contravene any of the data protection principles.

Also, under section 16 and Schedule 4 of the Act, the Registrar has powers of entry and inspection by way of the issue of warrants by one of the Island's Deemsters (Judges).

Additionally, under section 10 of the Act, the Registrar can issue an Enforcement Notice which may require a data user to comply with certain provisions of the Act within a certain time-scale.

(b) approvals (e.g. prior-checking, notification) YES

Under section 6 of the Act applications for registration must be made in the form required by the Registrar. Section 6 of the Act also details some of the particulars that are required to be registered while the other particulars are designated by an Order made under the Act. This is The Data Protection (Registration Particulars) Order 1999.

Again under section 7(2), of the Act the Registrar has the power to decline to include in the public register of data users and computer bureaux applications and amendments which she adjudges to be incomplete to the extent they would not give sufficient information as to the matters to which they relate or if they indicate that the applicant is likely to contravene any of the data protection principles.

- (c) redress for individuals (e.g. complaints, conciliation enforcement) YES

Under section 22 of the Act, the High Court can award compensation to an individual who suffers damage by reason of the inaccuracy of data held by a data user and to a person who suffers damage by reason of the loss of data, the destruction of data without the authority of the data user of the person carrying on a computer bureau, or the disclosure of data or access having been obtained to the data without the authority as aforesaid. Additionally, under section 23 of the Act, the High Court may order the rectification and/or erasure of inaccurate data.

Furthermore, as indicated previously, under section 35(2) of the Act, the Registrar is required to investigate complaints which appears to her to raise a matter of substance and to have been made without undue delay and by a person directly affected. This section also requires the Registrar to notify the complainant of the result of her consideration and of any action which she intends to take. This action might be to remedy the situation through conciliation or the issue of Enforcement, De-Registration or Transfer Prohibition notices under sections 10, 11 and 12 of the Act respectively. In all cases, the issue of a notice would ensure no further breaches of Principle. Where an investigation indicated non-registration or knowing or reckless processing personal data outside the registered particulars, the offender could be prosecuted under the Act. Rightly or wrongly, many complainants consider enforcement action or prosecution of offenders to be an appropriate form of redress.

- (d) sanctions available to Authority (for example, prosecution and enforcement) YES

As indicated in (b) above, under section 7(2) of the Act the Registrar has the power to decline to include in the public register of data users and computer bureaux applications and amendments which she adjudges to be incomplete to the extent they would not give sufficient information as to the matters to which they relate or if they indicate that the applicant is likely to contravene any of the data protection principles. To hold personal data without being registered is a strict liability offence under section 5(1) of the Act and the Registrar can prosecute under section 18(1) of the Act. The fine for processing while not registered on summary conviction can be up to £5,000 while there is no limit for conviction on information (section 18(2) of the Act). In either case, a contribution towards prosecution costs can be awarded.

Similarly, where a registered data user knowingly or recklessly processes personal data other than in accordance with their register entry contrary to

section 5(2) of the Act, the Registrar can prosecute under section 18(1) of the Act. The fine for processing while not registered on summary conviction can be up to £5,000 while there is no limit for conviction on information (section 18(2) of the Act). In either case, a contribution towards prosecution costs can be awarded.

As indicated in (c) above, under section 35(2) of the Act, the Registrar is required to investigate complaints which appears to her to raise a matter of substance and to have been made without undue delay and by a person directly affected. This section also requires the Registrar to notify the complainant of the result of her consideration and of any action which she intends to take. This action might be the issue of Enforcement, De-Registration or Transfer Prohibition notices under sections 10, 11 and 12 of the Act respectively. Should the data user fail to comply with the provisions of the Notice, a criminal offence would be committed which could be prosecuted under section 18(1) of the Act and if convicted, the offender would be fined in accordance with section 18(2) of the Act.

- (e) guidance (e.g. compliance advice) YES

Under section 35(3) of the Act, the Registrar shall arrange for the dissemination, in such form and manner as she considers appropriate, of such information as it may appear to her expedient to give to the public about the operation of the Act, and other matters within the scope of her functions under the Act. Documentation has been produced explaining the registration process, general guidelines upon the application of the Act and reference notes that give advice upon specific topics, e.g. registering data that is held in accordance with the Isle of Man Anti-money Laundering Code 1998. Additionally, advice is given by letter or telephone to individuals who contact the office seeking assistance with compliance.

In addition, under section 35(4) of the Act, the Registrar has a responsibility to encourage trade associations or other bodies representing data users to prepare, and to disseminate to their members, codes of practice for guidance in complying with the data protection principles.

Also, the Registrar and her officers attend conferences and seminars to give general advice on compliance issues and, upon request, will conduct external visits to data users.

As indicated earlier, under section 35(5) the Registrar is required to report to Tynwald annually. Once laid before the Court, this report is widely circulated as it is used as a vehicle to disseminate advice of a general nature.

- (f) public education YES

As in (e) above, under section 35(3) of the Act, the Registrar shall arrange for the dissemination, in such form and manner as she considers appropriate, of such information as it may appear to her expedient to give

to the public about the operation of the Act, and other matters within the scope of her functions under the Act.

Apart from various documentation that is produced by the office, the office maintains a web site which contains all manner of information about the Isle of Man Office of the Data Protection Registrar and the Registrar regularly participates in radio and press interviews and issues news releases and public notices as appropriate.

Also, as indicated earlier, the Registrar and her officers attend conferences and seminars to give general advice on the Act and she uses her annual report to educate and inform the general public.

- (g) policy advice for government YES

With regards to domestic policy, the Registrar is the driving force in seeking approval for the introduction and progression of both primary and subordinate legislation, for example the Data Protection Bill 2002 which is currently progressing through the House of Keys (lower house of Parliament).

Additionally, when the Government draws up administrative measures or regulations relating to the protection of individuals' rights and freedoms with regard to the processing of personal data the Registrar is consulted. For example, in recent months the Registrar has been asked for her input in the formulation of policy and procedures for vetting on-line gaming licence applicants and privacy statements for such organisations.

Similarly, when Executive Government must advise Tynwald as to whether or not they should adopt international treaties/protocols etc. the Registrar is asked for her comments. For example, in recent months the Registrar has commented upon the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108), Council of Europe Convention on Cybercrime and the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

Also, apart from being required by Statute (section 35(5)) to report annually to Tynwald, in accordance with her Contract of Employment the Registrar is required to report to the Council of Ministers quarterly. She uses these reports to keep the Members and Ministers informed of data protection issues which should be of interest to them.

- (h) studies or research (e.g. into developing technologies, privacy issues) YES

As the designated authority in the Island for the purposes of Article 13 of the European Convention pursuant to The Data Protection (Convention Functions) Order 1994 (SD. No. 483/94), the Registrar would assist any Convention authority if requested with research and/or other studies.

Furthermore, if the occasion arose when the Isle of Man Government required a study to be undertaken which concerned a data protection issue then the Registrar has no doubt that she would be requested to progress such a matter.

### Additional comments

29. Applicants are invited to offer any further comments that they wish.

In accordance with section 17(2) of the Act, the Registrar, members of the Tribunal and officers or servants of the Registrar who are not members of the Isle of Man Civil Service are bound by section 2 of the Official Secrets Act 1911 (an Act of the UK Parliament).

### Other materials

30. List any attachments which will accompany the application as an electronic attachment or to follow by post.

Background information, Guidelines, Registration Notes, Reference Notes and the Data Protection Bill 2002 can all be obtained from the Office's web site:  
[www.gov.im/odpr](http://www.gov.im/odpr)

31. If law under which the Authority operates is accessible on the Internet, please give the reference

URL: [www.gov.im/odpr](http://www.gov.im/odpr) Please refer to "Legislation"

32. If a recent annual report of the Authority (or a similar recent publication outlining typical activities) is available on the Internet, please give the reference

URL: [www.gov.im/odpr](http://www.gov.im/odpr) Please refer to "Annual Reports"

### Research use

33. With the consent of applicants, the Committee proposes to make copies of the applications available to appropriate researchers approved by the Committee to facilitate a study on data protection. Please indicate whether you agree to this use:
- I agree to this application being released to a researcher YES

### Making the application

The application should be emailed to the credentials committee at [credentials@privacy.org.nz](mailto:credentials@privacy.org.nz)  
If sent as an email attachment it should be in M/S Word.  
If unable to email the application, it should be posted to:

**Credentials Committee  
C/- Privacy Commissioner  
P O Box 466  
Auckland  
New Zealand**

The Committee needs access to a copy of the law under which the Authority is constituted. This need not be supplied in hard copy if it is available on the Internet and listed at question 31. If the law itself is not in English or French, it will be useful to supply an English or French summary or translation if one exists.

### **Use of information**

The information in this form will be used for processing the application and will be disclosed to members of the committee and their staff (being the commissioners from New Zealand, France and the United Kingdom) and future committees. It may be also disclosed also to the Data Protection Authorities which participate to the international conference and approved researchers. Any personal data contained in the form is available for access and correction in accordance with the applicable data protection laws of current and future committees. In the first instance it is subject to the New Zealand Privacy Act 1993.

ACCREDITATION OF DATA PROTECTION AUTHORITY  
CHECKLIST FOR THE CREDENTIALS SUB-GROUP

1 Name of Authority

Data Protection Registrar, Isle of Man

2 Does the authority have clear and wide ranging data protection functions covering a broad area of economic activity (eg not just an advising body or a body operating in a narrow field such as medical privacy)?

Yes

Notes

3 Legal Basis.  
Is the authority a public body established on an appropriate legal basis (eg by statute or regulation)?

Yes

Notes

4 Autonomy and Independence?  
Is the authority guaranteed an appropriate degree of autonomy and independence to perform its functions (eg the power to make public statements and protection from removal from office)?

Yes

Notes

5 Consistency with International Instruments.  
Is the law under which the authority operates compatible with at least one of the international instruments dealing with data protection and privacy (eg EU Directive, OECD Guidelines, Council of Europe Convention)?

Yes

Notes  
**All of OECD, CoE, UN and EU claimed.**  
**However, Isle of Man is not shown in its own right as having signed or ratified Convention 108 or the Protocol. Instead, it is covered by UK's ratification UK declared Isle of Man Data Protection Registrar to be the competent authority for the CoE Convention by letter of 21 January 1993. For details see <http://conventions.coe.int>**

6 Appropriate Functions.  
Does the authority have an appropriate range of functions with the legal powers necessary to perform those functions (eg the power to receive and investigate complaints from individuals without seeking permission)?

Yes

Notes

7 Does the Sub-group recommend accreditation?

Yes

Notes

8 If accreditation is recommended what is the accreditation as?

National authority (within the UN criteria)

Authority within a limited sub-national territory

Notes

**The application is as a national authority. The sub-group uses as its working guide for recognising national status the UN criteria. Isle of Man is not on the list of member states on the UN website: [www.un.org/Overview/unmember](http://www.un.org/Overview/unmember)**

***Recommended that it be accredited as a sub-national authority. Care must be taken as certain German Lander have applied to be both national and sub-national authorities, presumably because the federal authority has limited jurisdiction in their Land. Their applications may be limited to solely sub national status. A widening of the criteria from the UN criteria could lead to a significant impact in these areas***

9 If accreditation is as an authority within an international/supranational body does the recommendation include voting rights?

Not applicable

Notes

10 If accreditation is not recommended does the Sub Group recommend that

Notes

accreditation is refused or is more information needed before a decision can be made?

**Not applicable**

11 If accreditation is not recommended and the application is from an authority with narrow functions does the Sub Group recommend that, at the discretion of the conference host, observer status is granted?

**Not Applicable**

Notes

If more information is required what is this:

Signed on behalf of the Sub-group:

**Blair Stewart**

Date: **24 May 2002**

*Jonathan Bamford*

Date: 8/7/02

Date:

Note: 2 signatures required for recommendations for accreditation.  
3 signatures required for recommendations for refusal