



THE OFFICE OF THE
**Data Protection
Authority**

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

Registration with an ODPa Levy Collection Agent
(from January 2021)

Since January 2021 there is an opportunity for certain entities to become an ODPa 'Levy Collection Agent' (LCA) allowing them to pay the annual levy on behalf of other controllers or processors. This opportunity was created by [The Data Protection \(General Provisions\) \(Bailiwick of Guernsey\) \(Amendment No. 2\) Regulations, 2020](#).

This guidance note outlines:

- ✓ what you need to know about how this registration and payment route works,
- ✓ who can use this registration and payment route,
- ✓ where to find more detailed information,
- ✓ what a LCA 'Certificate of Exemption' is and what it should include.

BEING AN ODPa LEVY COLLECTION AGENT (LCA)

1. What is an LCA?

An LCA can declare and pay the ODPa levies on behalf of other entities. They are a collection point for the levy only. LCAs are **not** legally responsible for compliance with data protection law for any of the entities they collect the levy from.

2. What is the aim of LCAs?

The presence of LCAs from 2021 aims to:

1. Make '**bulk**' payment for several entities possible, in a straightforward way.
2. Assist in **raising awareness of the legal requirement to pay an annual levy** to the ODPa.

3. Who can be an LCA?

Any organisation registered with and/or regulated by the Guernsey Financial Services Commission can register with the ODPa as an LCA (see page 7 for legal definition).

4. What is the benefit of being an LCA?

If you choose to become an ODPa LCA you can offer this additional administrative service to your clients, making the payment process efficient and straightforward.

5. What does an LCA have to do?

If you are registered with and/or regulated by the GFSC, you can act as an LCA. There are four steps to becoming an LCA:

1. During quarter 4 of any given year start drafting *Certificates of Exemption* (see pages 5-7 for details) for all controllers or processors you will be looking after on **31 December of that year who wish to make use of your LCA service**.
2. In January-February of the subsequent year, complete your ODPa annual return as an LCA and **declare the number of controllers or processors** you held valid agreements with (i.e. those you have prepared *Certificates of Exemption* for) on 31 December of the previous year.
3. Pay to the ODPa an **aggregate of your own fee plus an additional £50 for each controller or processor**.
4. **Issue the *Certificate(s) of Exemption*** to all controllers or processors as required. This certificate must be presented to the ODPa upon request.

For example:

31 December 2023

On this date **Company A** (acting as an LCA) – has **37** clients who have confirmed they want Company A to pay their ODPa levy for them.

1 January – 28 February 2024

During this period Company A would complete their own ODPa annual return and **declare the 37 clients** they are paying on behalf of. Company A would then **issue** 37 *Certificates of Exemption*.

If you are acting as an LCA, you must maintain up to date and accurate records relating to the controllers and/or processors you are paying the levy for. This must include –

- Name of each controller or processor
- A copy of the *Certificate of Exemption* you have issued to them
- The date you provided the controllers or processors with a copy of the *Certificate of Exemption*

These records must be retained for 6 years.

It is important to note that the LCA bears **no** legal liability or responsibility for the data protection compliance of the controller or processor they are acting for in this capacity. The ODPa will communicate directly with the controller/processor who is responsible for the data processing in the event of a query or complaint.

6. What is a *Certificate of Exemption*?

A *Certificate of Exemption* is evidence that the ODPa Levy Collection Agent (LCA) has collected the relevant annual levy from the controller or processor who is using them to forward the annual levy in any given year. This demonstrates that the controller or processor is exempt from the requirement to register with, or pay the annual levy to, the ODPa, having paid this annual levy by via the LCA. The ODPa may request the *Certificate of Exemption* in order to ascertain whether a controller or processor has paid the annual levy required. **See pages 5-7 for more details on *Certificates of Exemption*.**

7. Is there a template for the *Certificate of Exemption*?

Yes, there is a *Certificate of Exemption* template on page 6.

Please read the accompanying instructions for use (on page 5), and Notes (on page 7).

8. What if I, as an LCA, take on new clients and/or incorporate new entities throughout the year – how do I pay for them?

Entities that have been newly incorporated / established will not need to be registered with the ODPA until the year following their incorporation / establishment, unless they answer ‘yes’ to any of these 4 questions:

- Do you employ 50+ Full Time Equivalent (FTE) staff?
- Are you required by law to appoint a Data Protection Officer?
- Do you act as an ODPA Levy Collection Agent?
- Are you a non-profit organisation (States of Guernsey Deputies are included under ‘non-profits’)?

If they answered ‘yes’ to any of the above four questions, then the newly incorporated / established entity will need to be registered with the ODPA this year. You will initially need to ascertain whether or not they are already registered and, if they are not, you or the entity themselves must complete a registration with the ODPA as a stand-alone registration. They cannot be added to your LCA registration figure.

If they answered ‘no’ to all of the above four questions, then the newly incorporated / established entity does not need to be registered with the ODPA this year but will need to be registered in the following year. If you have agreed to act as an LCA for the entity in the following year, then you do not need to do anything until you complete your next renewal with the ODPA as an LCA.

Entities that have already been incorporated / established in the years prior to becoming a new client of the LCA should already have a registration in place, either directly with the ODPA or via another LCA, which they can evidence. If they are not currently registered, then they will need to be.

As above, if they answer ‘yes’ to any of these 4 questions, then you or the entity themselves must complete a registration with the ODPA as a stand-alone registration. They cannot be added to your LCA registration figure.

- Do you employ 50+ Full Time Equivalent (FTE) staff?
- Are you required by law to appoint a Data Protection Officer?
- Do you act as an ODPA Levy Collection Agent?
- Are you a non-profit organisation (States of Guernsey Deputies are included under ‘non-profits’)?

If they answer ‘no’ to all of the above four questions they must either complete a registration directly with the ODPA or, if you have agreed to act as an LCA for these entities, you can request an invoice from the ODPA for the additional entity and your LCA declaration figure will be increased accordingly upon receipt of the funds. Please note, you will still need to ensure that you issue a Certificate of Exemption to the newly registered entity and retain appropriate records, as detailed in section 5 of this document.

9. Are there any controllers/processors I can't take on as an LCA?

Yes, you can only pay on behalf of controllers or processors who answer ‘no’ to all these 4 questions:

- Do you employ **50+ Full Time Equivalent (FTE) staff**?
- Are you required by law to appoint a **Data Protection Officer**?
- Do you act as an **ODPA Levy Collection Agent**?
- Are you a **non-profit organisation (States of Guernsey Deputies are included under ‘non-profits’)**?

If they answer yes to any of those questions, a separate registration must be completed by or on behalf of the Controller/Processor.

10. Where can I get more information?

If you have questions about the LCA payment route please refer to [The Data Protection \(General Provisions\) \(Bailiwick of Guernsey\) \(Amendment No. 2\) Regulations, 2020](#), in the first instance, or contact the ODPA.

See also [Everything you need to know about: ODPa Registration & Levy Regime](#) – for more general information.

HOW TO PAY VIA AN ODPa LEVY COLLECTION AGENT (LCA)

11. Who can appoint an LCA?

You can appoint an LCA to pay your levy to the ODPa, unless you answer ‘yes’ to any of these 4 questions:

- Do you employ **50+ Full Time Equivalent (FTE) staff?**
- Are you required by law to appoint a [Data Protection Officer](#)?
- Do you act as an **ODPa Levy Collection Agent?**
- Are you a **non-profit organisation (States of Guernsey Deputies are included under ‘non-profits’)?**

If you answer yes to any of those questions a separate registration must be completed by or on behalf of the Controller/Processor.

12. I want my organisation to authorise an ODPa levy collection agent (LCA) to pay the levy on our behalf. What do I need to know?

An LCA must be registered with and/or regulated by the GFSC.

If you authorise them to appropriately, they can add you (in your capacity as a controller or processor) to their own registration and pass on your levy payment to the ODPa on your behalf. The ODPa will not collect your details but the LCA must maintain records of these and make them available to the ODPa upon request.

Once the levy has been paid by the LCA on your behalf, they must provide you with a *Certificate of Exemption*. This certificate means that you have completed all the statutory returns and payments required to the ODPa for that calendar year.

If you use an LCA, it is really important to remember that **all the legal responsibility as well as liability for data protection compliance still rests with you**. LCAs are simply acting as payment gateway to assist with the administrative requirements for the regulated community.

If the ODPa wishes to make any enquiries regarding your personal data processing, the office will communicate directly with you and may require a copy of your *Certificate of Exemption*

13. How do I appoint an LCA?

If you have an existing business relationship with a corporate service provider (who may assist you with your administrative/governance functions) you could contact them and ask whether they are able to act as an LCA and whether they can pay the levy on your behalf.

If you do not use an existing corporate service provider, you can contact any organisation who is registered with and/or regulated by the Guernsey Financial Services Commission and ask them whether they are also registered with the ODPa as an LCA. Then you can instruct them to pay the levy on your behalf.

14. What is the benefit of using an LCA?

It allows you to outsource the annual administrative aspect of paying the ODPa levy. This means you can focus your time and energy on running your business well, and focusing on looking after the data in your care and complying with the data protection law.

15. Where can I get more information?

If you have questions about the LCA payment route please refer to [The Data Protection \(General Provisions\) \(Bailiwick of Guernsey\) \(Amendment No. 2\) Regulations, 2020](#), in the first instance, or contact the ODPa.

See also [Everything you need to know about: ODPa Registration & Levy Regime](#) – for more general information.

ODPA Levy Collection Agents – Template for *Certificate of Exemption*

- **What is a *Certificate of Exemption*?**

A *Certificate of Exemption* is evidence that the ODPA Levy Collection Agent (LCA) has collected the relevant annual levy from the controller or processor who is using them to forward the annual levy in any given year. This demonstrates that the controller or processor is exempt from the requirement to register with, or pay the annual levy to, the ODPA, having paid this annual levy by via the LCA. The ODPA may request the *Certificate of Exemption* in order to ascertain whether a controller or processor has paid the annual levy required.

It is the LCA's responsibility to issue the Certificate to the controller or processor.

A controller or processor who registers with an ODPA LCA **retains all legal responsibility as well as liability for data protection compliance.**

Instructions for use:

The template below is a guide for the minimum information that ODPA Levy Collection Agents (LCAs) should collect from and provide to the entities they are registering with the ODPA.

1. The LCA **must complete the yellow highlighted information** for each Certificate they are issuing.
2. If necessary, the LCA can transfer the text of the template below into another format, as long as the final version of the Certificate is issued to the registered entity as a standalone file.

[Levy Collection Agent (LCA) to insert their own logo in this header]

The Data Protection (Bailiwick of Guernsey) Law, 2017

Certificate of Exemption

This certificate is issued for the purposes of the *Data Protection (General Provisions) (Bailiwick of Guernsey) (Amendment No. 2) Regulations, 2020*.

We [INSERT DETAILS OF LEVY COLLECTION AGENT ISSUING THIS CERTIFICATE]:

- Name:

- Registered Address:

- Guernsey Financial Services Commission reference number:

- Telephone:

- Email*:

** please use a generic company email, not a named staff member's*

hereby certify that:

- ✓ We are acting as a levy collection agent on behalf of the Controller or Processor named below for whom we are paying the annual Data Protection Levy.
- ✓ This certificate has been issued to the Controller or Processor named below to be presented to the Office of the Data Protection Authority (ODPA) upon request.

The Controller or Processor listed below retains the legal responsibility and liability for compliance with *The Data Protection (Bailiwick of Guernsey) Law, 2017*.

[LCA TO INSERT DETAILS BELOW] Controller or processor for whom the levy collection agent is authorised to act:

- Name:

- Registered Address:

- Telephone:

- Email*:

** please use a generic company email, not a named staff member's*

- Calendar year for which this certificate is valid

Notes to Certificate of Exemption

Below is the legal meaning of 'Levy Collection Agent' (LCA) as defined in [The Data Protection \(General Provisions\) \(Bailiwick of Guernsey\) \(Amendment No. 2\) Regulations, 2020](#).

- (1) A person ("A") is a levy collection agent for any other person ("B") if–
- (a) A is –
- (i) a licensed fiduciary within the meaning of section 58(1) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000, and holds a fiduciary licence under that Law,
 - (ii) a licensed institution within the meaning of section 56(1) of the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
 - (iii) a licensed insurer within the meaning of Schedule 5 to the Insurance Business (Bailiwick of Guernsey) Law, 2002,
 - (iv) a licensed insurance intermediary or licensed insurance manager within the meaning of Schedule 3 to the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law,
 - (v) a person carrying on a financial services business registered under the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, or
 - (vi) a person licensed to carry on a controlled investment business under the Protection of Investors (Bailiwick of Guernsey) Law, 1987,
- (b) B has authorised A in writing to act as a levy collection agent for B for the purposes of these Regulations and the authorisation is in effect, and
- (c) A has agreed to act as a levy collection agent for B and the agreement is in effect.