Houses of Parliament
Jamaica

REPORT OF THE JOINT SELECT COMMITTEE ON ITS DELIBERATIONS ON THE BILL SHORTLY ENTITLED "THE DATA PROTECTION ACT, 2017"

1. ESTABLISHMENT, COMPOSITION AND TERM OF REFERENCE OF THE COMMITTEE

Members of this Honourable House are reminded that on the 7th day of November, 2017, the Minister of Science, Energy and Technology, Dr. Hon. Andrew Wheatley, moved:

BE IT RESOLVED that this Honourable House of Representatives appoint a Special Select Committee comprising the following Members:

Dr. Hon. Andrew Wheatley – **Chairman**
Mrs. Marisa Dalrymple Philibert
Mrs. Juliet Cuthbert Flynn
Mr. Franklin Witter
Mr. Julian Robinson
Mr. Mark Golding

to sit jointly with a similar committee to be appointed by the Senate, to consider and report on the Bill shortly entitled "*The Data Protection Act, 2017.*"

Members are further reminded that on the 10th day of November, 2017, the Minister of Foreign Affairs and Foreign Trade and Leader of Government Business having obtained suspension of the Standing Orders moved:

BE IT RESOLVED that this Honourable Senate appoint a Special Select Committee comprising

Senator Honourable Pearnel Charles, Jnr.
Senator Matthew Samuda
Senator Kerensia Morrison
Senator Donna Scott-Mottley
Senator Sophia Frazer-Binns

to sit jointly with a similar committee appointed by the House of Representatives to consider and report on the Bill shortly entitled "*The Data Protection Act, 2017*".

Members are reminded that on the 7th day of June, 2019, the Honourable Senator Kamina Johnson Smith, Minister of Foreign Affairs and Foreign Trade and Leader of Government Business, having obtained suspension of the Standing Orders, moved:

BE IT RESOLVED, with reference to the Resolution passed by this Honourable Senate on the 8th day of February, 2019, agreeing that the composition of all Committees of the Senate remain unchanged in this session of Parliament except by approved Resolution of this Senate, that the following be approved:

a) that, notwithstanding Standing Order 66, the name Robert Nesta Morgan be added to the membership of the Select Committee appointed by the Senate to sit jointly with a similar committee appointed by the House of Representatives to consider and report on a Bill shortly entitled, The Data Protection Act, 2017.

Members are further reminded that on the 11th day of June, 2019, the Honourable Fayval Williams, Minister of Science, Energy and Technology, having obtained suspension of the Standing Orders, moved:

BE IT RESOLVED, with reference to the Resolution passed by this Honourable House on the 12th day of February, 2019, agreeing that the composition of all Committees of the House remain unchanged in this session of Parliament except by approved Resolution of this Honourable House, that notwithstanding Standing Order 66, the name Fayval Williams be added to the membership of the Select Committee appointed by the House to sit jointly with a similar committee appointed by the Senate to consider and report on a Bill shortly entitled, The Data Protection Act, 2017 and that the Minister of Science, Energy and Technology be appointed Chairperson of the Committee.

Members are also reminded that by virtue of a resolution approved by this Honourable House on the 4th day of February, 2020, the composition of your Committee, as set out above, was made to continue in force for this session of Parliament and we were empowered to proceed with matters that were before us from the stage reached at prorogation.

A similar motion was approved in the Senate on the 7th day of February, 2020.

2. INTRODUCTION

Your Committee started its deliberations on the Bill shortly entitled, "*The Data Protection Act, 2017*" on the 22nd day of November, 2017. We agreed at our first meeting that we will take a consultative approach by inviting members of the public, through public notices placed in the major newspapers, to make submissions on the Bill, as well as writing to specific entities inviting them to make submissions. The notices were placed in the Sunday Observer and the Sunday Gleaner on November 26, 2017, December 17, 2017 and January 7, 2018. Some of the entities which we sought views from did not respond to your Committee's request.

We received and heard submissions from the following entities and individuals:

1. The Information Technology Industry Council
2. Latin American Internet Association

3. Digicel (Jamaica) Limited
4. The National Consumers League of Jamaica
5. The U.S. Chamber of Commerce
6. The SlashRoots Foundation and Make Better Community
7. The Jamaica Computer Society and the Jamaica Information Technology and Services Alliance
8. The JN Bank Limited
9. The Jamaican Bar Association
10. Creditinfo Jamaica Limited
11. Lawyers' Christian Fellowship Jamaica/The Jamaica Coalition for a Healthy Society
12. Flow (Cable & Wireless Jamaica Limited and Columbus Communications Limited)
13. Broadcasting Commission
14. Media Association Jamaica Limited
15. National Identification System (NIDS) Project Unit, Office of the Prime Minister
16. Mr. Delton Phillips – Software Development Professional
17. Ms. Shaista Peart – Information Governance Consultant
18. Mr. David Holland – Data Management Consultant
19. Ms. Helen-Ann Elizabeth Wilkinson
20. Hart Muirhead Fatta, Attorneys-at-Law
21. The Jamaica Chamber of Commerce
22. Jamaica Bankers Association
23. Press Association of Jamaica
24. Financial Investigations Division (FID)
25. Jamaica AIDS Support for Life
26. Office of the Director of Public Prosecutions

The technical teams that assisted your Committee in its deliberations comprised of representatives from:

- The Ministry of Science, Energy and Technology (MSET)
- The Office of the Parliamentary Counsel
- The Attorney General's Chambers (AGC)
- The Legal Reform Department

We held a total of twenty-six (26) meetings, the last being on the 20th day of February, 2020 (***See Appendix 1***).

3. OVERVIEW

Your Committee noted that the policy imperatives which guided the Data Protection Bill were the constitutional right to privacy found in section 13(3)(j) of the Charter of Fundamental Rights and Freedoms; Jamaica's commitment through CARIFORUM to the Economic Partnership Agreement with the European Union (EU); the Guidelines for the Regulation of Computerized Personal Data Files, which was adopted by the United Nations General Assembly in 1990 and

request that governments take same into consideration in their legislation and administrative regulations; and the Information and Communication Technology Policy, 2011. We also noted that the Bill was modelled from the United Kingdom (UK) Data Protection Act, 1998.

The Memorandum of Objects and Reasons provides that the proposed legislation will protect the privacy of personal and sensitive personal data in possession of public and private entities. The Bill proposes to provide for certain fundamental rights of individuals in relation to their personal data and the establishment of an Information Commissioner, whose remit will be to oversee how personal data in the possession of entities are handled.

The Bill is broken down into seven parts, that is, the basic interpretative provisions; the rights of data subjects and others; requirements for data controllers; standard for processing personal data; exemptions to data protection standards or to disclosure to data subject requirements; enforcement; and miscellaneous and general information in relation to data sharing. It also comprises of the First, Second, Third, Fourth and Fifth Schedules which outline the details of how the provisions in the respective parts will work. The First Schedule proposes the appointment of the Information Commissioner and his or her staff; the Second Schedule offers miscellaneous exemptions regarding personal data; the Third Schedule addresses the powers of entry and inspection of the premises of data controllers; the Fourth Schedule relates to clause 65 and outlines provisions in relation to the *Criminal Justice (Administration) Act*; and the Fifth Schedule proposes an Appeal Tribunal.

Your Committee now has the honour to presents its findings and recommendations.

4. FINDINGS AND RECOMMENDATIONS

A. General Observations

It was evident from the stakeholders' consultation that there was general support for the Bill given that its main purpose was to ensure the security of personal data in the possession of entities. Your Committee, however, took note from the submissions that there were general concerns about the Bill, particularly, the powers given to the Commissioner; the lack of an oversight body for the Commissioner; the timeline for the implementation of the proposed legislation; registration requirements; notification of contravention or breach; processing for the purpose of journalism; the temporary exemption for manual data held by public authorities; appointment of data protection officers; fines to be charged; and the 'one-size-fits-all approach' of the proposed legislation on all entities and the need for a tiered approach. We further noted various entities' requests for exemptions to particular provisions of the Bill in light of the fact that there were other legislation and regulations governing them. The MSET noted the instances where a data controller or his or her representative will not be required to comply with the disclosure to data subject requirements, data protection standards, and some of the provisions of the Bill. The categories include national security; law enforcement, taxation, statutory functions; regulatory activity; journalism, literature and art; research, history and statistics; information

required to be made available to the public by or under an enactment; disclosure required by law or made in connection with legal proceedings; parliamentary privilege; domestic purposes; and some miscellaneous matters.

We raised concern about the cost of implementation of the data protection regime and took note of the response received from the Jamaica Bankers Association that the cost of compliance by financial institutions in other regions ranged from US$25,000 to US$1,000,000, depending on the size of the institution. Additionally, we wanted to find out the budget projection for the Office of the Commissioner, and whether benchmarking was done regarding the likely cost of the entity. We were informed that a report done by a consultant engaged by the International Telecommunication Union to support the MSET revealed that an estimated budget of approximately J$1.7B was required for the establishment of that Office. We were advised that the consultant recommended that the Office of the Commissioner focus, in the first three (3) years of its establishment, on medium and large companies. The consultant also estimated an annual registration fee of J$12,000 for entities.

Your Committee is of the view that public education will be important in allowing the general public to understand the proposed legislation.

B. Specific Recommendations

Part I- *Preliminary*

Clause 1 – Short title and commencement

Your Committee enquired whether the parts of the Bill will be brought into effect on a phased basis. We were advised of the MSET's recommendation to bring into effect first provisions relating to the Office of the Commissioner before other provisions of the Bill. We were told that this would ensure that staff of that Office commence working with data controllers to have them prepared for the effective date of implementation of other provisions of the Bill. **We support this suggestion and recommend an amendment to clause 1(1) to indicate that different dates be provided for different parts of the Bill.**

Clause 2- Interpretation and objects

This clause provides the interpretation to key terms that are used throughout the Bill. Based on the concerns raised by stakeholders, your Committee wishes to make the following recommendations:

Accessible record

Your Committee agrees to the proposal made by the MSET that the term "accessible record" be deleted because it appeared in the definition of "data", which was recommended to be deleted from the Bill.

Biometric data

We support the proposal made by the MSET that the definition of biometric data be amended to mean *any information relating to the physical, physiological or behavioural characteristics of an individual which allows his unique identification, such as the photograph or other facial image, signature, finger print, toe print, palm print, foot print, vein pattern, iris scan, retina scan, blood type, height, or eye colour or such other attribute of the individual.* **Noting that this amended definition will cover information pertaining to a person's bodily characteristics and behavioural characteristics, we felt that the term "behavioural characteristics" would be open to different interpretations. We were advised that whilst the term will be difficult to define, the word "including" should be inserted after the term along with examples. We support this suggestion.**

Consent

Of concern was that the definition of consent was limited in terms of the method and form, and did not explain the degree of consent to be obtained from data controllers. We also observed that one stakeholder was of the view that there should be a specific provision outlining the requirements for consent on behalf of minors. Your Committee supports the deletion of the definition from clause 2 and the insertion of a new clause 9 to address "consent to processing". We agree that in the new clause 9, consent should be defined along the line:

"consent" means any manifestation of informed, specific, unequivocal, freely given expression of will by which the data subject accepts that his personal data be processed and includes any such expression of consent given by–

(a) the legal personal representatives of the data subject;
(b) any individual to whom the data subject delegates in writing the right to give or withhold consent to the processing; or
(c) in the case of a minor, a parent or legal guardian of the minor.

We realized that there were consequences to informed consent and noted that in the *DNA Evidence Act*, consent was based on the categories of persons such as a suspect, a disabled person and children. We questioned if more requirements were considered for informed consent than the general use of the term "consent". In light of this, **your Committee agrees that in the new definition of consent, a similar provision in relation to informed consent should be provided as explained in the explanatory notes of the UK Data Protection Act of 2018, that is, at the time in question, the data subject should be informed about how his or her data will be processed. We also agree that consent should be freely given and should not be a condition to offering goods or services.**

In relation to consent on behalf of minors, we were advised that the proposed definition of *consent* adequately addressed the matter.

Data

We agree with the proposal that the term "data" should be deleted and wherever the word "data" appeared in the Bill, the word "personal" should be inserted before it.

Data processor

Your Committee recommends that the definition be structured as one sentence by deleting the paragraphs and semicolons.

Educational record

A consequential amendment was made to delete the definition of "educational record" since the term would have only been used in the reference to personal data in the amended transitional provision.

Health professional

We enquired whether the University Hospital of the West Indies (UHWI) would be considered a public health facility. **We were advised that that hospital was "hybrid" and support the suggestion that the definition of health professional be amended to include a new paragraph (k) to words to the effect *"the hospital established pursuant to the University Hospital Act"*.**

Health record

Your Committee recommends that a sub-paragraph be inserted next after sub-paragraph (b)(i)(C) to include the term "biometric data".

Personal Data

Your Committee recommends that wherever in the definition the word "data" appeared, it should be deleted and the term "information" be inserted instead.

We observed that only living individuals were covered in the definition of personal data and therefore made enquiry about same. We noted that this was also a concern that was expressed by the Ministry of Health and Wellness during the MSET's consultation with that Ministry. We were advised that it was suggested by the Ministry of Health and Wellness that the medical information of deceased persons should be protected for a particular period of time. The AGC informed your Committee that there were provisions in legislation of various jurisdictions to protect the right to privacy of information of a deceased person. It was also pointed out that case law suggests that the right to privacy could continue after death. **In keeping with section 10 of the *Archives Act*, we recommend that personal data should also mean information relating to an individual who has been deceased for thirty years.**

Process

Considering that the processing of data was described in the definition of the term "data", which is proposed to be deleted, **your Committee recommends that words to the effect "whether or**

not by automated means" be inserted before the words "on the information or data" in the definition of process.

Relevant filing system
A consequential amendment was made to delete the term "relevant filing system".

School
The Committee having agreed to delete clause 35, which made provision for the Minister to exempt from the disclosure to data subjects information related to mental and physical health, school and social work, **we recommend that the definition of "school" be deleted since the term was only referenced in that clause.**

Sensitive personal data
Regarding this definition, concerns were raised about paragraphs (f), (g), and the use of the term "philosophical beliefs" in paragraph (c). In respect of the term "philosophical beliefs", we noted the MSET's concern that the term should not be deleted since "philosophical beliefs" are personal and no data controller should request a data subject to share information relating to same. We sought to find out what was meant by sex life in paragraph (f) in light of the recommendation by one stakeholder that the term be defined. We were advised by representatives from the MSET that the term was not defined in the data protection legislation of other jurisdictions. Whilst one Member suggested that the term "sexual orientation" should be used instead of the term "sex life", we noted that the use of this term was limited and that "sex life" as a sensitive personal matter should be considered in the broadest sense.

With regard to the proposal made that paragraph (g) of the definition should be deleted from the definition of "sensitive personal data" as the definition would interfere with the constitutional fundamental rights and freedoms, **your Committee recommends that the paragraph be amended along the line *"the alleged commission of any offence by the data subject or any proceedings for any offence alleged to have been committed by the data subject;".***

A consequential amendment was made to insert the following definitions in the appropriate alphabetical sequence, "disclosure to data subject requirements" and "the non-disclosure provisions".

Clause 3 – Application of Act
Stakeholders raised concern about the extraterritorial effect of the provisions of the Bill and its application to data controllers established in Jamaica or where Jamaican law applied. We questioned how an obligation could be imposed on persons who had no legal obligation to enforce Jamaican legislation within their territories. We were advised by representatives from the AGC that there would not be an adverse effect if there was an additional provision relating to extraterritoriality in clause 3, but that the clause would have to take into account clause 62, which deals with the Minister's power to make regulations as to co-operation by the

Commissioner with authorities in foreign states. In light of this explanation, your Committee unanimously agreed that the Bill should include an extraterritorial provision given the reach of the European Union General Data Protection Regulation (GDPR) and it being anticipated that other countries might have extraterritorial provisions in their data protection legislation. **We recommend that the clause be worded similarly to Article 3 of the GDPR, which relates to territorial scope,** which is as follows:

Article 3

1. *This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to:*

a) *the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or*

b) *the monitoring of their behaviour as far as their behaviour takes place within the Union.*

2. *This Regulation applies to the processing of personal data by a controller not established in the Union, but in a place where Member State law applies by virtue of public international law.*

Clause 4- Information Commissioner

Your Committee examined the proposals that the Office of the Commissioner should be a Commission of Parliament and subject to parliamentary oversight; and an oversight body comprising members of the Government, the Opposition, civil society, private sector and the Church should be appointed to oversee that Office. **We recommend that there should be an oversight structure for the Office of the Commissioner similar to that of the oversight structure of the Integrity Commission, the Financial Services Commission or a combination thereof.** A consequential amendment was made to insert a new clause 4(10) to allow the Commissioner to be subject to the oversight of the Data Protection Oversight Committee in accordance with the new Part II of the First Schedule.

A consequential amendment was made to the clause providing that the First Schedule be broken into two Parts. Part I of the First Schedule will include the current provisions of the Schedule and Part II will include provisions relating to the Oversight Committee.

Subclause (3)(b)

Your Committee considered the concern made about the Commissioner administering the Bill as well as the *Access to Information Act*. We were advised that the Commissioner will have oversight for both legislation and that his or her responsibility in relation to the *Access to Information Act* will also be provided in that legislation. We enquired whether the Office of the Commissioner would replace the Appeal Tribunal in that Act. Your Committee was informed that the *Access to Information Act* would operate separately from the Bill. We noted that representatives from the MSET anticipate that there will be amendments to the *Access to*

Information Act to allow for one tribunal to examine matters relating to appeals under both legislation.

Subclause (5)(e), (5)(f), (6)(a) and (6)(c)
A consequential amendment was made to subclauses 5(e), 5(f), (6)(a) and (6)(c) based on the concerns raised in relation to clause 58.

We support the recommendation that subclause (5)(e) be amended to include that the Commissioner also consults with persons appearing to represent data controllers in imposing the guideline.

Part II- *Rights of Data Subjects and Other*

Clause 5 – Interpretation for Part II
Having considered stakeholders' comments about the absence of an option to allow for a third party to act on a data subject's behalf either via power of attorney or as a representative appointed by the court, **we recommend that clause 5 be widened to allow persons, whether they have a physical impairment or not, the right to choose anyone to act on their behalf either by way of a letter of authorization or power of attorney. We further recommend that the categories of persons listed by hierarchy in clause 5(a)(ii)(A to E) should only apply to persons with mental impairments and not to persons with physical impairments. Your Committee was of the view that persons with physical impairments should be able to choose any one of the categories of persons to act on their behalf.** Your Committee took a decision to use the provision in section 3(3) of the *Mental Health Act* in considering "nearest relative".

Clause 6- Right of access to personal data
Concerns were raised about how prescribed fees would be calculated and whether the fees would be prescribed without consultation; confidential financial information being shared with persons who were not customers of a bank; the time period within which a data controller would comply with a data subject's access request in comparison to the time period within which a data subject would make a complaint; the Commissioner referring a matter being investigated by him or her to a mediator; the characteristics or qualifications of the duly appointed mediator; whether the clause would be applicable to credit bureaus; and the clause being drafted to restrict the improper usage of right of access. With regard to financial information, the MSET's research did not find that banking information was exempted from a subject access request. In respect of the fees in clause 6(5)(a) and (b), we were told that this would be determined by the Minister based on consultation, and placed in regulations. It was suggested by representatives from the MSET that the 30 days time period in subclause (4) should remain since this period was similar in the data protection legislation of Canada, Trinidad and Tobago, St. Lucia, Antigua and Barbuda and most European countries. In respect of the concern about the mediator in subclause (8),

representatives from the MSET were of the view that it was not necessary to define a "duly qualified mediator" since within the jurisprudence, a qualified mediator would be certified. Furthermore, we were advised that the inclusion of a provision relating to a mediator would provide the Commissioner with an option on how to resolve a dispute between a data controller and a data subject regarding the data subject's request.

Subclause (2)(c)
In respect of clause 6(2)(c), we were advised that a data subject has the right to be provided with data in an intelligible form upon the payment of a prescribed fee. We were advised that intelligible form would not be sufficient for persons who have an audio or visual disability and therefore information should be in a form that was easily understood. **We recommend that provision be made to ensure accessibility by persons with physical impairments.**

Clause 7
A consequential amendment was made to insert a new subclause to define the term "intelligible form" as used in clause 6(2)(c).

Clause 8
Your Committee recommends that no amendment is necessary for this clause.

Clause 9 – Personal data held other than in a relevant filing system by a public authority
In light of the concerns raised by stakeholders that public authorities, which tend to hold the bulk of information, would be exempted from some of the requirements of the Bill, **your Committee recommends that the clause be deleted and a new clause be inserted to address consent to processing.**

A new clause 10 was inserted to address consent required for direct marketing and the existing clause 10 was renumbered to clause 11.

Clause 10 – Right to prevent processing likely to cause damage or distress
Your Committee recommends that the marginal note be amended to read "Right to prevent processing".

Clause 11
One stakeholder indicated that consideration be given to requiring data controllers, who operate websites, to acquire the consent of data subjects before being placed on call and email lists; and to allow data subjects to be informed that their information would be passed on to marketing companies. However, we noted from the submissions of other stakeholders that data subjects should be given the option of opting-out. We had concerns in relation to the obligations being placed on data subjects to opt-out of receiving information for direct marketing purposes, and felt that data subjects should be given the right to opt-in. We were advised that the Bill in its

current form made provision for data subjects to opt-out of not receiving information for the purposes of direct marketing, as well as to opt-in. We were also informed that in order to process personal data, consent would have to be given by a data subject for the purposes of direct marketing and a data controller being required to indicate prior to the processing, the purposes for which data would be collected and used. We learnt that many jurisdictions allowed for an opt-in approach from the standpoint of requiring consent to use the data in the manner stipulated for direct marketing but these States also provided for an opt-out regime. **After a lengthy discussion, we agreed to delete the provisions in clause 11 and replace same with a similar wording to that of section 69 of South Africa's Protection of Personal Information Act, 2013, which outlines the rights of data subjects regarding direct marketing by means of unsolicited electronic communications, directories and automated decision making.**

Clause 12 – Rights in relation to automated decision-taking

It was brought to your Committee's attention that it would be onerous for companies to provide information that was not within their purview and that exemptions should be granted to some entities such as credit bureaus, and deposit-taking institutions since their operations would be based on automated processing. Whilst we noted this concern, we did not agree that exemptions should be provided to these institutions.

Although concerns were raised about the use of the terms "significantly affects" and "decision" in subclause (1), we did not feel that the terms should be defined and the ordinary meanings should apply. A stakeholder recommended that the word "may" should replace the word "shall" in subclause 5, which would require the Information Commissioner to request a data controller to reconsider a decision or make a new decision. We noted that the data protection legislation in countries such as Barbados and the Cayman Islands used similar language to that of clause 12(5) and therefore we agreed that the residual discretion of the Information Commissioner should remain.

Subclause (3)(b)

With regard to the dichotomy of the time period of a data subject making a complaint and a data controller responding to the complaint, **we support the suggestion that an amendment be made to clause 12(3)(b) to change twenty-one days to thirty days.**

Clause 13 - Rectifications of inaccuracies, etc.

Your Committee recommends that no amendment is necessary for this clause.

Part III- *Requirements for Data Controllers*

Clause 14 – Interpretation for Part III

Your Committee recommends that no amendment is necessary for this clause.

Clause 15 - Prohibition on processing without registration

It was brought to your Committee's attention that the clause was onerous and over-regulating in requiring all data controllers to be registered; exemption should be provided for credit bureaus and data processed for journalistic purposes; and public registers should not be exempted from the provisions. In respect of the first concern, we were advised that prior to the GDPR, all data controllers in European states were required to be registered based on prior directives in the EU. We were informed that since the EU regime was mature, the GDPR removed the requirements for a mandatory registration process and replaced same with an impact assessment, which a data controller would need to indicate, among other things, whether it was processing data that was likely to prejudice the rights and freedoms of a data subject. However, there was a residual power in each EU State to be able to require notification where certain activities were being undertaken, for example processing of personal data relating to criminal convictions or offences. It was felt that given that the data protection regime will be new in Jamaica, the Office of the Commissioner should be provided with information on all data controllers, the categories of data that was being processed, the purpose for which data was being processed and the destination of data. It was noted that one Member of your Committee expressed concern about the inclusion of a registration provision in light of the fact that the EU did not require same.

We did not support the suggestion for credit bureaus to be exempted.

Concerning the issue raised by stakeholders about the exemption of public registers in subclause 3, your Committee also expressed concern about same and felt that if these registers were exempted, it might be less effective to monitor them in upholding the data protection standards. **Hence, we agree that clause 15(3) be deleted.**

During your Committee's deliberations on clause 17, we felt that the Commissioner should be empowered to determine over time companies that were required to be registered. However, we were advised that clause 15 gave the Minister power, by order and subject to affirmative resolution, to exclude certain types of processing or data processors. **Considering this, your Committee agrees that clause 15(2) be amended to require the Minister to consult with the Commissioner on the types of data controllers that should be excluded from registration and same be brought to the Parliament for affirmative resolution.**

Clause 16 - Provision of registration particulars

Your Committee recommends that no amendment is necessary for this clause.

Clause 17 – Register

Stakeholders raised concerns about micro, small and medium-sized enterprises (MSMEs) having to be registered and the cost of registration. Your Committee also expressed concern about the likely size of data controllers that will be placed on the register. We were advised by representatives from the MSET that the Ministry will be guided by the *MSME and*

Entrepreneurship Policy of 2017 in determining the registration of MSMEs. Despite this, we expressed the view that all companies should be registered and the Commissioner should be able to determine subsequently after the establishment of the Office, the entities that were not required to be registered. One Member of your Committee felt that entities should not be charged a registration fee for the first registration and the Commissioner should determine subsequently, after the first registration, data controllers who would be required to pay the annual fee.

Your Committee recommends that no amendment is necessary for this clause.

Clause 18 - Offences

In our discussion of the concern raised by stakeholders that the terms of imprisonment and fines were onerous in the circumstances of the offences, **we agreed that the term of imprisonment in a Parish Court should be changed from two years to six months and that the provision relating to the penalty in a Circuit Court (clause 18(3)(b)) be deleted.** We felt that the fines in clause 18(3)(a) of the Bill sufficiently reflect the severity of the offences.

Clause 19 - Assessment by Commissioner required for specified processing

The concerns raised by stakeholders in respect of this clause were the need for a criteria for the Minister to determine "specified processing"; the subjectivity of the term "substantial damage or distress" and the need for a definition for same; the subjectivity of the Minister to determine "specified processing" since the order would be made by him or her; and the possible subjectivity of the provision in being a harm to investigative journalism. In respect of the concern about whether the provision of the clause would impact investigative journalism, the AGC advised that the right to freedom of expression and the right to privacy have often caused problems in case law and courts have suggested that there should be a balance between both rights. The type of information that the Bill covered related to personal data as opposed to the right to freedom of expression. We were informed that both rights were enshrined in the Jamaican Constitution and the wording of clause 19 appeared to be consistent with the standard that the right to freedom of expression should not prevent one's right to privacy under the Constitution. One Member of the Committee enquired about the objective of the clause since the provision did not appear to be effective in providing protection. Your Committee was advised that the clause replicated provisions of the UK Data Protection Act, 1998, and the Maltese Data Protection Act, 2001, which were repealed. We were advised that the policy of the MSET was to allow the Commissioner to assess whether the type of processing would require a higher threshold from a data controller.

Your Committee recommends that no amendment is necessary for this clause.

Clause 20 – Appointment of data protection officers

Your Committee was advised by representatives from the MSET that data controllers were required to appoint data protection officers (DPOs), who would be required to investigate, in an independent manner, whether a data controller complied with the provisions of the Bill. We noted concerns about whether all entities should be required to have a DPO, which could be onerous on small businesses and **support the proposal for the adoption of a negative and a positive list in the consideration of the appointment of DPOs by data controllers. For the positive list, we agree that the following entities would be required to appoint a DPO, that is, public authorities; entities that process sensitive personal data or data relating to criminal convictions; and entities that process data relating to a large number of data subjects. The negative list, we felt would exclude from the requirement to appoint a DPO, non-profit organizations that were established for political, philosophical, religious or trade-union purposes; and public registers. We recommend that the Commissioner be empowered to prescribe the class of data controllers that will not be required to appoint a DPO.**

Part IV- *Standards for Processing Personal Data*

Clause 21 – Duty of data controller to comply with standards

We did not recommend any changes to concerns raised about an undue burden being placed on a data controller being required to report a security breach; the Commissioner's treatment of information to be shared with him or her; and fines and the periods of imprisonment being onerous. Your Committee did not support the recommendations that substantial breaches should be reported, with minor breaches being reported two or three times for the year; and protection standards being applied and used to govern the Bill.

Subclause (2)

Your Committee recommends that the words "or fails to make a report or notification required under subsection 3 or 5", or words to that effect, be included after the word "Part" in this subclause.

Subclause (3)

We support the suggestion made that there should be more prescription in relation to the time period in which a data controller was required to report a breach and agree that the words "undue delay" be deleted and the words "not later than 72 hours", or words to that effect be added.

Subclause (5)

A concern was expressed that the use of the term "likely" in the subclause would place an unnecessarily low threshold and an unreasonable obligation on data controllers. Members of your Committee were advised that words similar to that used in the Alberta Personal Information Protection Act, that is, "real risk of significant harm to", could be inserted. Upon further examination, we felt that it should be mandatory that data controllers report all contraventions or

security breaches to data subjects. **Your Committee therefore recommends that the words "is likely to affect a data subject, the data controller shall without undue delay notify the data subject of" be deleted and words along the line "occurs, the data controller shall upon becoming aware of, or having reason to become aware of, the contravention or breach, notify each data subject, whose personal data is affected by the breach of" be inserted. We further agree that the subclause be amended to take into consideration the form, manner and time within which data subjects shall be notified of any contravention or security breach.**

Clause 22 – The first standard

Subclauses (1) and (3)

Your Committee noted that one stakeholder expressed concern about the use of the word "fairly" in the subclause and the need for clarification regarding same. Another stakeholder was of the view that since data obtained pursuant to international obligations were deemed to be obtained fairly, these obligations should be stated and incorporated in local legislation. Your Committee was advised that there was no need to clarify the use of the term "fairly" since clauses 23 and 24 provided clarity in what could be described as fair. Furthermore, we were told that there was no need to define international obligations as suggested by the stakeholder since there were internal processes that were utilized to review international obligations to ensure, among other things, consistency with the Constitution and pre-existing legislation. Hence, we did not support the proposals made.

Subclause (7)

One stakeholder commented that subclause (7)(a) limits the rights provided in subclause 4, which means that whenever the information was necessary for a legal obligation, the data subject was not to be provided with the required information. The stakeholder also noted that subclause (7)(b) imposed a limitation on the rights of the data subject and the limitation would not be known until sometime in the future. Your Committee was advised that the exemption in the clause was not unique since in most data protection regimes, there were exemptions to the right of disclosure to the data subject, for example, for purposes of national security or law enforcement. This clause provided one such instance, where by virtue of the provisions under other enactments or for compliance with other legal obligations, the data could not be disclosed. The MSET advised that to prevent an ever-increasing list of circumstances which could arise to prevent disclosure to data subjects, per clause 22(7)(b), that additional circumstances, when prescribed should be made subject to Parliamentary oversight via an affirmative resolution. Your Committee supports this advice and does not recommend an amendment.

Clause 23 – Conditions for processing personal data in accordance with the first standard

Subclause (1)(b)

In respect of clause 23(1)(b), we recommend that it be a criminal offence if a third party to whom anonymized data are transferred uses other information to de-anonymize the data, that is, to re-identify an individual. Your Committee agrees that the fine for the offence of

re-identifying anonymous data should be set at a ceiling of J$2M on summary conviction in the Parish Court, and for conviction on indictment in the Supreme Court, the person should be liable to a fine to be determined by the judge based on the gravity of the circumstance.

Subclause (1)(d)
In relation to the use of the term "vital interest" in the provision, your Committee noted that there was no need for the term to be defined in the Bill and based on a general review of the literature, the term was limited to life-threatening circumstances where there was no other legal ground for processing.

Subclause (1)(e)
A consequential amendment was made to subclause (1)(e)(ii) to delete the words "on any person".

We noted during the Committee's consultation that concerns were raised about the apparent exemption afforded to Government to be deemed to be processing data fairly and lawfully when that processing is necessary for the administration of justice, and undertaken generally by the Government under clause 23(1)(e). **We concur that the provision is wide and therefore, recommend the deletion of clause 23(1)(e)(iii).**

New subclause
Your Committee noted that clause 10(2) provides the grounds under which data subjects could request that a data controller cease processing his or her data. **However, we recommend that a further condition be inserted in clause 23 to allow data subjects to indicate to a data controller that he or she wishes to withdraw consent and there was no longer a right to process his or her data.** An amendment was made to subclause (1)(a) to delete the words "has given his consent to the processing" and the words "consents to the processing and has not withdrawn that consent" be inserted instead.

Clause 24 – Conditions for processing sensitive personal data in accordance with the first standard
We support the recommendation that the words "sensitive personal data" should replace the words "personal data" throughout the clause given that the clause relates to sensitive personal data.

Subclause (1)(g)(iii)
Given that this subclause was similar to clause 23(1)(e)(iii), we recommend its deletion.

Clause 25 – The second standard
Your Committee recommends that no amendment is necessary for this clause.

Clause 26 – The third standard

We noted the concern that words such as "excessive", "adequate", "relevant" were ambiguous, and the proposal that the Commissioner should publish guidance notes to clarify the way in which the term "excessive" was to be interpreted. Your Committee reasoned that the wording outlined in article 5(1)(c) of the GDPR which stated that personal data shall be "adequate, relevant and limited to what was necessary for the purposes for which they are processed" was more in line with what was intended. **Your Committee therefore recommends that the words "not excessive, in relation to the purpose" should be deleted and words along the line of "limited to what is necessary for the purposes" be included instead.**

Clause 27 – The fourth standard

We observed that a suggestion was made that an obligation should be placed on data subjects to keep their data up to date. We were advised that no jurisdiction placed this obligation on data subjects; and hence, we recommend that no amendment is necessary for this clause.

Clause 28 – The fifth standard

Although your Committee recommends that no amendment was necessary for this clause, it was noted that the MSET will take into consideration, when drafting Regulations for the proposed legislation, the record-keeping requirements under the Proceeds of Crime (Money Laundering Prevention) Regulations, 2007, the Banking Services (Deposit Taking Institutions) (Customer Related Matters) Code of Conduct, 2016; and specific retention periods for which data are processed.

Clause 29 - The sixth standard

Your Committee recommends that no substantive amendment is necessary for this clause.

Clause 30 – The seventh standard

This clause provides that appropriate technical and organizational measures should be taken against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. Stakeholders suggested that the provisions could be more robust as they appeared to be inadequate. **We support the MSET's view that greater clarity could be given to the technical and organizational measures which were required to be taken by data controllers, and the recommendation that similar language be adopted from Article 32 of the GDPR and the UK's Data Protections Act, 2018.**

Clause 31 - The eighth standard

Concerns were raised about the transfer of data to other territories outside of Jamaica. One particular recommendation that was of note was that a list of territories that had adequate protection should be provided. **Your Committee recommends for adoption the scheme as reflected in Article 28(3) of Malta's Data Protection Act of 2002, which provides that the Commissioner may authorise a transfer or set of transfers of personal data to a State or**

territory that did not have the adequate level of protection, provided that the data controller had adequate safeguards, which may result particularly by means of appropriate contractual provisions. Your Committee also agrees that the clause be amended to allow an exemption for cross-border transfer of personal data in instances that were related to intelligence, investigations or law enforcement.

Subclause (4)(h)
A consequential amendment was made to delete the word "which" and the words "(which may include contractual terms) that" be inserted instead.

Subclause (4)(j)
A consequential amendment was made to subclause (4)(j) to create an exception where transfer is necessary for the purposes of national security, or the prevention, detection or investigation of crime.

Part V- *Exemptions to Data Protection Standards or to Disclosure to Data Subject Requirements*

Clause 32 - Interpretation for Part V
Your Committee recommends that the definitions of the terms "disclosure to data subject requirements" and "the non-disclosure provisions" be deleted from this clause and removed to clause 2. As a result of this recommendation, subsequent provisions were renumbered.

Clause 33 - National Security
Although we noted the concern about the Minister of National Security issuing the certificate of exemption for the purpose of safeguarding national security, your Committee recommends that no amendment is necessary for this clause as we were advised that the concept of allowing exemption on the grounds of national security was not a new concept, as other data protection legislation provide for a similar exemption.

Clause 34 - Law enforcement, taxation, statutory functions etc.
Your Committee recommends that wherever in the clause or the Bill prevention and detection of crime were addressed, the word "investigation" should be inserted.

Clause 35 – Health, education and social work
This clause suggests that the Minister may by Order, exempt from disclosure to data subject requirements, or modify requirements in relation to personal data such as information relating to the physical or mental health of a data subject. **We support the recommendation that the clause be deleted since there should be no exemption for withholding health, education and social work information from data subjects.** Based on this recommendation, subsequent clauses were renumbered.

Clause 36 – Regulatory activity
The clause provides that personal data processed for the use of discharging any function should be exempted from disclosure of data requirements to the extent that the information would likely prejudice the proper discharge of those functions.

Subclause (2)(a)(ii)
We support the recommendation made that clause 36(2)(a)(ii) be deleted as similar language used in clauses 23(1)(e)(iii) and 24(1)(g)(iii) was recommended by your Committee for deletion.

Clause 37 – Journalism, literature and art
Stakeholders raised concern about this clause on the basis of journalism. We observed that it was recommended that the clause be deleted as it placed the Commissioner in a superintending role regarding the practice of journalism to determine whether publication would be in the public interest; clause 37 (1) should be amended to read that personal data which are processed for the special purposes were exempt from the provision specified in subsection 2; and clause 37(1) should be amended to make it clear that the exemption protections applied to pre- and post-publications. We did not support any of these recommendations.

Subclause (1)(a)
A consequential amendment was made to subclause (1)(a) to insert the words ", or consists of," next after the words "with a view to".

Members expressed concern about the grouping of literary and artistic purposes with journalism and felt that journalism should be separate given the constitutional guarantee for the freedom of speech and expression that relate to journalism. However, we were advised that no jurisdiction treated with the matters separately, and that the court in making a judgment in relation to journalistic, literary and artistic matters would consider the purpose of processing. On this advice, we did not feel that there should be any amendment to separate journalism from artistic and literary works. **However, we recommend that in clause 37(1)(b), words to the effect should be included after the word "expression", "or the right to seek, receive, distribute or disseminate information, opinions and ideas through any media".**

Clause 38 - Research, history and statistics
Your Committee recommends that no amendment is necessary for this clause.

Clause 39 - Temporary exemption for manual data held by public authorities
Your Committee noted that clause 39 offered temporary exemption to manual data that forms part of an accessible record or was recorded information held by a public authority for a period of two (2) years from the date of commencement of the Bill. We noted that data was exempted from the first, second, third, fifth, seventh and eighth data protection standards; the sixth data

protection standard, except so far as that standard relates to the rights conferred on data subjects by clauses 6 and 13; clauses 10, 11 and 12; Part III of the Bill; clause 63; and clause 71 (liability for damage). **We support the recommendations that the exemption of manual data should be applicable to all data controllers and that the exemption period be extended to two years. Your Committee further recommends that the clause be deleted and removed to the transitional provisions.** Based on this recommendation, subsequent clauses were renumbered.

Clause 40 - Information available to the public by or under any enactment
Your Committee recommends that no amendment is necessary for this clause.

Clause 41- Disclosures required by law or made in connection with legal proceedings, *etc.*
Your Committee recommends that no amendment is necessary for this clause.

Clause 42 - Parliamentary privilege
Your Committee recommends that no amendment is necessary for this clause.

Clause 43- Domestic purposes
Your Committee recommends that no amendment is necessary for this clause.

Clause 44 - Miscellaneous exemptions
We did not support the recommendations that financial records should be included in the miscellaneous exemptions outlined in the Second Schedule, and that provisions be made in the Second Schedule to exempt the FID from the requirements of the Bill. Regarding the FID's recommendations, your Committee noted that the exemptions requested have already been provided by virtue of clauses 34 and 36 of the Bill. Hence, your Committee recommends that no amendment is necessary for this clause.

Clause 45 - Power to make further exemptions by order
Your Committee recommends that no amendment is necessary for this clause.

Part VI- *Enforcement*

Clause 46 - Enforcement notice
Your Committee recommends that no amendment is necessary for this clause.

Clause 47- Data protection impact assessment
Members of your Committee raised concern about whether all data controllers would be required to carry out an impact assessment, and felt that the Commissioner should be given the power to determine the entities that should do so. On one hand, one member suggested that size of businesses as well as the revenue of these entities should be a factor to consider in determining entities that should file an assessment report. Another member said that the size of the business should not be a factor since some small enterprises collect important personal data. These concerns were in line with the concerns raised by stakeholders, with one stakeholder suggesting

a phased implementation of the Bill with this clause coming into force one year after the relevant forms were published in the *Gazette*. After a lengthy discussion, Members agreed to the following:

- the Commissioner should be able to specify the classes or kinds of data or data controllers that were required to comply with subclause (1) to submit a data protection impact assessment;
- there should be a new subclause (3) which specifies the minimum information that should be included in the data protection impact assessment;
- a new subclause (4) should be included to enable the Commissioner to publish a notice in the *Gazette* and any other media appropriate in order to bring to the attention of the public, the classes or kind of data or data controllers who were required to comply with the requirement to submit a data protection impact assessment; and
- there should be a new subclause (5) providing the factors that the Commissioner should take into account in determining the classes or kinds of data or data controllers who were required to comply with the requirements.

Considering these recommendations, we agreed that subclause (1) be amended along the following lines –

" (1) Unless otherwise specified in a notice under subsection (4), a data controller shall, in respect of each calendar year –

(a) within ninety days after the end of the relevant calendar year; and
(b) in such form as may be prescribed by the Commissioner by notice published in the Gazette,

submit to the Commissioner a data protection impact assessment in respect of all personal data in the custody or control of the data controller.".

The new subclauses (3), (4) and (5) should be along the following line -

"(3) The data protection impact assessment form prescribed under subsection (1) shall require at least the following information –

(a) a detailed description of the envisaged processing of the personal data and the purposes of the processing, specifying, where applicable, the legitimate interest pursued by the data controller;
(b) an assessment of the necessity and proportionality of the processing operations in relation to the purposes;
(c) an assessment of the risks to the rights and freedoms, of data subjects, referred to in subsection (5); and

(d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Act, taking into account the rights and legitimate interests of data subjects and other persons concerned.

(4) The Commissioner may publish a notice in the Gazette, and in such other manner as the Commissioner considers appropriate to bring the notice to the attention of data controllers, specifying the classes or kinds of personal data, or data controllers, to which subsection (1) shall apply or shall not apply.

(5) In determining any class or kind for the purposes of subsection (4), the Commissioner shall have regard to the likely level of risk to the rights and freedoms of data subjects involved in processing the data concerned, taking into account the nature, scope, context and purposes of the processing.".

Clause 48 - Requests for assessment
Your Committee recommends that no amendment is necessary for this clause.

Clause 49 - Assessment notices
Based on the concerns raised by the National Identification System Project Unit that the provision of the clause might lead to a compromise of personal and identity information contained in the National Civil and Identification Database or by other data controllers during compulsory assessments, and that the Bill failed to set out the factors that will inform the Commissioner's decision to serve an assessment notice, **your Committee recommends that a provision be included to require the Commissioner to prepare and publish a specific code of practice governing assessment notices. Additionally, we agreed that there be guidelines for the Commissioner to publish and issue assessment notices with reasons, and that similar language to the provision on code of conduct for assessment notices in the UK Data Protection Act 1998, be adopted.**

Further to your Committee's recommendation and the proposal to insert a new subclause 6 to detail how the Commissioner should exercise his or her power to issue the code of practice and the matters the code should specify, a consequential amendment was made to clause 49 to include provisions which defined the terms "social care" as used in the new subclause (6)(b) and "assessment report" as used in the new subclause (6)(d). We agreed that the term "financial need" should be included in the definition of "social care".

Clause 50 - Limitations on assessment notices
Your Committee recommends that no amendment is necessary for this clause.

Clause 51- Information notices
Your Committee recommends that no amendment is necessary for this clause.

Clause 52 – Determination by Commissioner as to the special purposes
Your Committee recommends that no amendment is necessary for this clause.

Clause 53 – Restriction on enforcement in case of processing for the special purposes
Your Committee recommends that no amendment is necessary for this clause.

Clause 54 – Failure to comply with notice
Subclause (4)
Your Committee recommends that the fine of five hundred thousand dollars be increased to one million dollars.

Clause 55 – Rights of appeal
Your Committee recommends that no amendment is necessary for this clause.

Clause 56 - Determination of appeals
Your Committee recommends that no amendment is necessary for this clause.

Clause 57 - Powers of entry and inspection
Your Committee recommends that no amendment is necessary for this clause.

Part VII- *Miscellaneous and General*

Clause 58 – Reports and codes of practice to be laid before Parliament
Your Committee spent considerable time deliberating on mandatory codes, codes of practice and codes of conduct. Our concerns were that there would be no legal liability for a breach of codes especially for those codes that were mandatory; and there was a lack of coherence in the approach of some codes being required to be tabled whilst other codes were subject to affirmative resolution by both Houses of Parliament. We were informed that based on the provisions of data protection legislation in the UK, Isle of Man, Jersey and Bermuda, non-compliance with a code was not considered an offence, whilst in other jurisdictions, an offence was created for a breach of a code. However, we noted that Trinidad and Tobago's Data Protection Act, 2011 made reference to mandatory codes and voluntary codes, and there was provision which states that where the Information Commissioner was of the opinion that mandatory codes should be developed in the public interest, he or she, could by Order, require the development of a code of conduct and set a time limit for its development. We were referred to section 74 of Trinidad and Tobago's legislation which made provision that where the Commissioner had approved a code of conduct, the Minister could by Order, make compliance with the code mandatory. We learned that an offence was created if there was failure to comply with the mandatory code of conduct. **Your Committee recommends that the word "code" be used to refer to measures that will be legally binding, and the word "guidelines" be used for measures that will not be legally binding but relevant for the regulatory assessment of conduct. This means that mandatory codes and voluntary codes of practice should be**

referred to as guidelines, and the data-sharing code, which all data controllers were required to adhere to, should be referred to as code.

Clause 59 – Data-sharing code
This clause addresses the preparation of a data-sharing code by the Commissioner and the submission of the code to the Houses of Parliament for affirmative resolution. The recommendation with respect to clause 58 is applicable to this clause.

Subclause (2)
We endorse the recommendation made by one of the stakeholders that clause 59(2) be amended to require that persons "who appear to the Commissioner to represent the interest of data controllers" be consulted with in developing the data-sharing code.

Clause 60 - Effect of data-sharing code
Your Committee recommends that no amendment is necessary for this clause.

Clause 61 - Assistance by Commissioner in cases involving processing for the special purposes
One Member of your Committee enquired as to whether the Commissioner had *locus standi* to intervene in any proceedings especially those relating to the interpretation of provisions of the Bill. We were advised by the AGC that based on part 56 of the Civil Procedure Rules, 2002, any statutory body could be a party to proceedings for any subject matter that would fall within its statutory remit. Although we were informed that the Office of the Commissioner, as a body corporate, would be a statutory body, and data protection matters would fall within the Commissioner's remit, **your Committee recommends that the clause be amended to allow the Commissioner to be a party to any proceedings relating to data protection.**

Clause 62 - International co-operation
Your Committee recommends that no amendment is necessary for this clause.

Clause 63 – Unlawfully obtaining, disclosing, etc., personal data
Subclause (2)(a)(i)
One Member of your Committee expressed concern about subclause 2(a)(i) being an unusual provision since it would allow any person to obtain information and indicate that the basis for doing so was for the prevention or detection of a crime. This, the Member indicated, could pose a problem. **The AGC advised that the provision should be deleted since no rationale could be provided by the MSET for the inclusion of same in the Bill. Your Committee supports this advice.**

Subclause (9)
A consequential amendment was made to subclause (9) to delete the words "or 39 (manual data)".

Clause 64 - Power of Commissioner to impose fixed penalty

Your Committee recommends that the clause be amended to allow for the fixed penalty notice to be a summons. We were advised by the AGC that this would allow the clause to be consistent with other legislation. An amendment was made to insert a new subclause (9)(c) to take this recommendation into consideration.

Subclause (1)

An amendment was proposed to the subclause to delete the words "is satisfied" and the words "has reason to believe" be inserted instead. A further amendment was made to delete paragraph (a) and substitute same with words along the line "(a) the data controller has committed an offence to which this section applies".

Subclause (3)(a)

A consequential amendment was made to delete the words in subclause (3)(a) and substitute same with words along the line "an offence under section 21(2) (failure of controller to comply with standards or to make a required report or notification) or section 16(7) (failure to provide particulars)".

Subclauses (5), (6) and (9)

Your Committee agrees with the recommendation that the time period in subclauses (5), (6) and (9)(b)(i) be changed from "15 days" to "30 days" to allow more time for data controllers to fully assess the penalty and potential avenues for recourse.

Clause 65 – Prohibition of requirements as to production of certain records

Subclause (5)(a)

A consequential amendment was made to subclause (5)(a) to include after the words "personal data", the words "that is recorded information held by a public authority other than by means which enable the data to be processed automatically, or to be structured either by reference to individuals or criteria relating to individuals so that specific information relating to a particular individual is readily available;".

Clause 66 – Avoidance of certain contractual terms relating to health records

Your Committee recommends that no amendment is necessary for this clause.

Clause 67 – Disclosure of information

Your Committee and stakeholders expressed concern about the wide power granted to the Commissioner to be able to, notwithstanding any enactment, require information from any data controller. The MSET advised that some countries in their data protection legislation had similar provisions to that of clause 67, whilst some countries limited the section of their legislation to take into account matters of national security and safeguarding the security of the country, or information privileged from disclosure in court proceedings. We were informed that some matters such as information before the courts, legal professional privilege, which was a

fundamental right that was inviolable, and national security should be considered. **Having considered the matter, your Committee recommends that the provision be amended to include appropriate exemptions to the provisions.**

Clause 68 – Confidentiality of information
Your Committee recommends that no amendment is necessary for this clause.

Clause 69 - Prosecutions and penalties
Subclause (1)(a) and *(b)*
A proposal was made that redress for individuals must be included and this right must not be conferred only upon the legal fraternity or the Director of Public Prosecutions (DPP). We were advised by the MSET that the clause relates to criminal charges that would be brought by the police and subsequently dealt with by the DPP. We were advised that individuals were able to bring a civil suit against any person who they believed was in contravention of the Bill with regard to their personal data by virtue of clause 71. **Your Committee recommends that no amendment is necessary for this clause.**

Clause 70 – Liability of body corporate, directors, *etc.*
Subclause (1)
The main concern that was raised for this clause was in relation to the 10% fine of the annual gross income of a body corporate, which was considered exorbitant. A suggestion was made that a precise sum of less than the 10% annual gross income should be set for the fine. It was pointed out to Members of your Committee by representatives from MSET that the fine of 10% annual gross income represented a maximum fine and the court would assess, based on guidance provided in the clause, the fine that would be applicable. Members of your Committee initially supported the 10% fine and were in general support for a worldwide annual turnover as used in the GDPR instead of the gross income of a local subsidiary. It was of note that one Member of your Committee cautioned that consideration should be made about a total worldwide annual turnover since this could have implications. Based on advice provided to the MSET by Tax Administration Jamaica (TAJ), we were informed that language to the effect of "gross annual turnover for the preceding year of assessment in accordance with the *Income Tax Act*" would be administrable since TAJ currently assessed worldwide annual turnover of companies incorporated in Jamaica.

Your Committee recommends that the fine of 10% annual gross income of body corporate be changed to 4% of the annual gross worldwide turnover of companies for the preceding year of assessment, regardless of where incorporated.

Clause 71 - Liability for damage
We noted that concerns were raised about the use of the term "damage"; a person being able to recover damages under the Bill and the *Defamation Act*; and the need for a specific period to be

established for which claims for compensation could be brought before the court by a claimant. In respect of damages, the AGC advised that the policy of the MSET had to be considered. The MSET pointed out that provision relating to damage should be determined by the court and the data protection jurisprudence would need to evolve in Jamaica. We were told that the defamation jurisprudence was developed differently from that of data protection, and awards for defamation were usually considered excessive, and sections 24 and 33 of the *Defamation Act* addressed the issue of damages and limitation period for action, respectively. **Your Committee recommends that no amendment is necessary for this clause.**

Clause 72 - Appeals
Your Committee recommends that no amendment is necessary for this clause.

Clause 73 - Service of notices
Your Committee recommends that no amendment is necessary for this clause.

Clause 74 - Application to Crown
Stakeholders raised concern about the Crown being excluded from liability for prosecution. We were advised by the AGC that if a public authority breached a person's rights, the person could apply based on the *Crown Proceedings Act* to initiate proceedings against the State. We were also advised that disciplinary sanctions could be applied to a civil servant if he or she acted in a manner inconsistent with the Bill. Given this explanation, your Committee recommends that no amendment is necessary for this clause.

Clause 75 – Application to Parliament
Your Committee recommends that no amendment is necessary for this clause.

Clause 76 – Regulations
Subclause (1)(b)
We recommend that the words "or transitional provisions or savings" be deleted and the words ", transitional or saving provisions" be inserted instead.

Subclause (3)
A consequential amendment was made to subclause (3) to insert a new paragraph (d) to take into consideration regulations under clause 22(7) prescribing additional circumstances in which a data controller is not obliged to disclose to a data subject the information referred to in clause 22(4). With the insertion of the new paragraph, subsequent subclauses were renumbered.

New clause regarding amendment of monetary and fixed penalties
A new clause was proposed to be inserted before the transitional provision empowering the Minister by order subject to affirmative resolution to amend any monetary penalty or fixed penalty imposed by the proposed legislation.

Clause 77 – Transitional

Subclause (1)

We recommend that the words "one year from the date of commencement of this Act" be deleted and words along the line "two years from the earliest day appointed under section 1(1)" be inserted.

A consequential amendment was made to include a new subclause (3) based on the recommendation in clause 39.

INSERTION OF NEW PROVISIONS

Right to data portability

We support the recommendation of stakeholders that data subjects should be given the right to obtain and reuse their personal data in ways they choose across different services and between different companies. A consequential amendment was made to clause 6 to include this right.

Review of the Bill once enforced

Your Committee agrees that a provision be included in the proposed legislation for it to be reviewed every five years from the earliest day appointed under clause 1(1). A consequential amendment was made to include a new clause after the transitional provision to take same into consideration.

New criminal offence

We recommend that there should be an offence for the destruction or alteration of records to prevent the disclosure to data subjects of information following a data subject access request.

SCHEDULES

First Schedule and Appendix to First Schedule

Paragraph (2)

Your Committee was of the view that the Commissioner should not hold office for more than two terms, and that he or she should not hold office for such term not exceeding seven years. We did not support the retirement age of sixty-five (65) years for the Commissioner. Your Committee therefore agrees that:

(a) The word "five" in paragraph (2)(1) of the First Schedule be deleted and the word "seven" be inserted instead;

(b) Paragraph (2)(4) of the First Schedule be deleted and a new paragraph be inserted with words along the line "The Commissioner shall in any case vacate office on completing fourteen years of service as Commissioner";

(c) The words in paragraph (2)(3)(a)(i) of the Appendix to First Schedule be deleted and replaced with the words "on or after completing one term of service as Commissioner";

(d) The word "ten" in paragraph (2)(3)(b) of the Appendix to First Schedule be deleted and the word "seven" be inserted instead.
(e) A consequential amendment to paragraph (4) of the Appendix to First Schedule be done to link it to the completion of a term or a shorter period.

A consequential amendment was made to paragraph (2)(3)(a)(ii) of the Appendix to First Schedule to delete the word "attainment" and replace same with the word "completion".

Paragraph (2)(6)

Your Committee supports the proposal of the MSET that another ground of termination, that is, termination for cause, be included in the references to Tenure of Office of the Commissioner in paragraph (2)(6). Additionally, we recommend that there be the inclusion of provisions relating to the procedure to be applied for the termination for cause.

New provisions in the First Schedule

Your Committee recommends that a provision be included for general qualifications and expertise required for appointment as Commissioner. An amendment was made to paragraph (1)(1) of the First Schedule to take same into consideration.

An amendment was made to the First Schedule to include a new Part II to provide for a Data Protection Oversight Committee, as recommended in clause 4. We support the proposal of the AGC that a provision be included in this Part to allow the Office of the Commissioner to provide the Committee with such resources as the Committee requires for the discharge of its functions.

Second Schedule

Your Committee recommends that no amendment is necessary for this Schedule.

Third Schedule

Your Committee raised concern about paragraph (2)(5) of this Schedule which allows for items seized to be retained as long as necessary and persons being provided with a copy of any document seized and a receipt of any other item seized. **Having considered section 78 of the *Proceeds of the Crime Act* during our deliberations, we agree that a provision be included in this Schedule to allow for the return of items seized.** An amendment was made to include a new paragraph (2)(6) to take same into consideration.

Fourth Schedule

Your Committee recommends that no amendment is necessary for this Schedule.

Fifth Schedule

We noted that the chairperson of the Tribunal was required to be a retired Judge of the Supreme Court or the Court of Appeal and expressed concern that the skill sets of other members of the

Tribunal were not stated. Having been advised by the MSET of the skill sets of members on the appeal tribunals in Barbados, Malta and the UK data protection legislation, **we recommend that members of the Tribunal should possess knowledge in data protection and privacy law.** An amendment was made to include a new paragraph (1)(2) to take same into consideration.

OTHER RECOMMENDATIONS

Your Committee recommends that since there was a proliferation of appeal bodies established under legislation for a range of matters, there should be an amalgamation of appeal bodies to handle appeals across different statutes dealing with related subject matters.

Your Committee, having agreed that the provision of the Bill will be applicable to data controllers overseas, expressed concern about the enforcement of a judgment against an individual or entity that was not present in Jamaica. Having considered the issue, one Member of your Committee recommends that the Ministry of Foreign Affairs and Foreign Trade pursue the possibility of Jamaica having reciprocal enforcement of judgement arrangements with key jurisdictions where the data of Jamaicans were being processed.

In light of the number of amendments that are being proposed to the Bill, we recommend that the Bill be withdrawn and a new Bill be tabled reflecting the amendments as outlined in the list of amendments, which is appended to the report. (*Please see Appendix II*).

5. ACKNOWLEDGEMENTS

Your Committee wishes to express its gratitude to the entities and individuals who made oral and written contributions on the Bill. Special thanks are also extended to the technical team from the MSET; the Office of the Parliamentary Counsel; the AGC; and the Legal Reform Department.

Your Committee wishes to express thanks to the media, which ably reported on the proceedings of the meetings. Your Committee also wishes to thank the Clerk and the staff of the Houses of Parliament for their support and courtesies extended during the meetings.

Houses of Parliament
March, 2020

APPENDIX I
ATTENDANCE
TWENTY-SIX (26) MEETINGS

Member	Present	Absent	Apologies
*Hon. Fayval Williams – **Chairman**	**18**	**-**	**-**
Dr. Andrew Wheatley	**9**	**17**	**2**
Mrs. Marisa Dalrymple Philibert	**6**	**20**	**9**
Mrs. Juliet Cuthbert Flynn	**22**	**4**	**4**
Mr. Franklin Witter	**21**	**5**	**3**
Mr. Julian Robinson	**20**	**6**	**6**
Mr. Mark Golding	**17**	**9**	**8**
© Senator Hon. Pearnel Charles, Jnr.	**13**	**11**	**8**
Senator Matthew Samuda	**16**	**10**	**8**
Senator Kerensia Morrison	**25**	**1**	**1**
Senator Donna Scott Mottley	**17**	**9**	**8**
Senator Sophia Frazer-Binns	**21**	**5**	**4**
¬Senator Robert Nesta Morgan	**12**	**6**	**6**

*** - Member could only have attended a maximum of eighteen (18) meetings.**

¬ - Member could only have attended a maximum of eighteen (18) meetings.

© - Member resigned from the Senate on February 11, 2020 and could only have attended a maximum of twenty-four (24) meetings.

APPENDIX II
AMENDMENTS TO THE DATA PROTECTION BILL RECOMMENDED BY THE JOINT SELECT COMMITTEE OF PARLIAMENT

PROVISION	AMENDMENT
Clause 1	1. In subsection (1), insert immediately after the word "*Gazette*" the words ", and different days may be appointed in respect of different provisions of this Act". 2. In subsection (2), insert next after the words "types of" the word "personal".
Clause 2	1. In subsection (1) – (a) delete the definitions of "accessible record", "consent", "data", "educational record", "relevant filing system" and "school"; (b) delete the definition of "biometric data" and substitute therefor the following – " "biometric data", in relation to an individual, means any information relating to the physical, physiological or behavioural characteristics of that individual, which allows for the unique identification of the individual, and includes – (a) physical characteristics such as the photograph or other facial image, finger print, palm print, toe print, foot print, iris scan, retina scan, blood type, height, vein

pattern, or eye colour, of the individual, or such other biological attribute of the individual as may be prescribed; and

(b) behavioural characteristics such as a person's gait, signature, keystrokes or voice;";

(c) in the definition of "data controller", insert next after the words "process the" the word "personal";

(d) delete the definition of "data processor" and substitute therefor the following –

" "data processor", in relation to personal data, means any person, other than an employee of the data controller, who processes the data on behalf of the data controller;";

(e) insert the following definitions in the appropriate alphabetical sequence –

" "disclosure to data subject requirements" means –

(a) the information mentioned in section 22(6) required to be given to a data subject under section 22(4); and

(b) the provisions of section 6;

"the non-disclosure provisions" means the following provisions, to the extent to which they prohibit the disclosure in question –

(a) the first data protection standard, except to the extent to which disclosure is required for compliance with the conditions set out in

sections 23 and 24;

(b) the second, third, fourth and fifth data protection standards; and

(c) sections 11, 13(3) and (4);";

(f) in the definition of "health professional", insert next after paragraph (j) the following paragraph –

"(k) the Hospital established pursuant to the University Hospital Act;";

(g) in the definition of "health record", insert next after paragraph (b)(i)(C) the following sub-paragraph –

" (D) biometric data;";

(h) delete the definition of "personal data" and substitute therefor the following –

" "personal data" –

(a) means information (however stored) relating to –

(i) a living individual; or

(ii) an individual who has been deceased for less than thirty years,

who can be identified from that information alone or from that information and other information in the possession of, or likely to come into the possession of, the data controller; and

(b) includes any expression of opinion about that individual and any indication of the intentions of the data controller or any other person in respect of that individual;

(i) in the definition of "process", delete the words "in relation to information or data means obtaining, recording or storing the information or data, or carrying out any operation or set of operations" and substitute therefor the words "in relation to information or personal data means obtaining, recording or storing the information or personal data, or carrying out any operation or set of operations (whether or not by automated means)";

(j) in the definition of "sensitive personal data", delete paragraph (g) and substitute therefor the following –

"(g) the alleged commission of any offence by the data subject or any proceedings for any offence alleged to have been committed by the data subject;".

2. In subsection (2), delete the words "contained in the data" wherever they appear and substitute therefor in each case the words "contained in the personal data".

Clause 3 Delete subsection (1) and substitute therefor the following –

" (1) Except as otherwise provided for in section 60, this Act applies to a data controller in respect of any personal data only if the data controller –

(a) is established in Jamaica or in any place where Jamaican law applies by virtue of international public law, and the personal data are processed in the context of that establishment; or

(b) though not established in Jamaica –

(i) uses equipment in Jamaica for processing the personal data otherwise than for the purpose of transit through Jamaica; or

(ii) processes personal data, of a data subject who is in Jamaica, and the processing activities are related to –

(A) the offering of goods or services to data subjects in Jamaica, irrespective of whether a payment of the data subject is required; or

(B) the monitoring of the behaviour of data subjects as far as their behaviour takes place within Jamaica.".

Clause 4

1. In subsection (2), insert next after the words "provisions of" the words "Part I of".

2. In subsection (4), insert immediately after the words "any person or other entity" the words ", except as provided in subsection (10)".

3. In subsection (5)(b), insert next after the words "protection of" the word "personal".

4. In subsection (5)(e) –

(a) delete the words "mandatory codes" and substitute therefor the word "guidelines"; and

(b) in paragraph (ii), delete the words ", data subjects or persons representing data subjects" and substitute therefor the words "or persons representing data controllers, data subjects, or

persons representing data subjects, or such other entities having an interest in the matter".

5. Delete subsection (5)(f) and substitute therefor the following –

"(f) where the Commissioner considers it appropriate to do so –

(i) encourage trade associations to prepare, and to disseminate to their members, self-initiated guidelines; and

(ii) where any trade association submits self-initiated guidelines for the Commissioner's consideration, consider the guidelines and, after such consultation with data subjects or persons representing data subjects, as appears to the Commissioner to be appropriate, notify the trade association whether in the Commissioner's opinion the guidelines promote the following of good practice.".

6. In subsection (6) –

(a) in paragraph (a), delete the words "code of practice is" wherever they appear and substitute therefor in each case the words "guidelines are"; and

(b) in paragraph (c), delete the word "code" and substitute therefor the word "guidelines".

7. Insert next after subsection (9) the following subsection –

" (10) The Commissioner shall be subject to the oversight of the Data Protection Oversight Committee in accordance with Part II of the First Schedule.".

Clause 5

1. Delete paragraph (a) and substitute therefor the following –

"(a) in the case of an individual who -

(i) is a minor, the rights conferred by this Part may be exercised by a parent or legal guardian of the minor, or by the minor in any case where the law recognises the capacity of the minor to act in the matter to which the personal data relates; or

(ii) by reason of any mental impairment is unable to act, the rights conferred by this Part may be exercised by the person's nearest relative, within the meaning of section 3(3) of the Mental Health Act, so, however, that –

(A) such a relative need not be ordinarily resident in Jamaica; and

(B) the Court may, where it considers it appropriate in the circumstances, on an application made to it by a relative of the data subject, determine the nearest relative suitable to exercise the rights notwithstanding the order of precedence referred to in section 3(3) of the Mental Health Act;".

2. Delete paragraph (b) and substitute therefor the following –

"(b) in the case of any other individual, the rights conferred by this Part may be exercised by –

(i) the legal personal representative of that individual; or

(ii) another individual to whom the first mentioned individual delegates in writing, in such form and manner as may be prescribed, the exercise of the rights.".

Clause 6

1. In subsection (2), delete the words "7, 8 and 9" and substitute therefor the words "7 and 8".

2. In subsection (2)(b) –

   (a) delete the words "if data" and substitute therefor the words "if personal data";

   (b) in paragraph (ii), delete the words "the data" and substitute therefor the words "the personal data".

3. Delete subsection (2)(c) and substitute therefor the following –

   " (c) upon payment of the prescribed fee –

      (i) to have communicated to that individual in an intelligible form –

         (A) the information constituting any personal data of which the individual is the data subject; and

         (B) any information available to the data controller as to the source of those personal data; or

      (ii) where technically feasible, to have transmitted –

         (A) to another data controller specified in the request; and

         (B) in a structured, commonly used and machine-readable format,

      the personal data of that data subject, which the data subject has provided to the first mentioned

data controller; and".

4. In subsection (7) –

(a) delete the words "relevant data" and substitute therefor the words "relevant personal data";

(b) in paragraph (a), delete the words "any data" and substitute therefor the words "any personal data".

Clause 7

1. Re-number subsection (2) as subsection (3) and insert the following as subsection (2) –

" (2) For the purposes of section 6(2)(c) "intelligible form", in the case of a person with a disability (as defined by the Disabilities Act), means a form that would render the information readily accessible by the person, having regard to the special needs of the person, and regulations may prescribe circumstances in which the requirements of subsection (2)(c) shall be taken to have been met.".

2. In subsection (3) (as re-numbered), delete the words "the data" and substitute therefor the words "the personal data".

Clause 8

1. In subsection (7), insert the word "personal" before the word "data" wherever it appears.

2. In subsection (9) –

(a) delete the words "Where data" and substitute therefor the words "Where personal data"; and

(b) in paragraph (b), delete the words "is data" and substitute therefor the words "are personal data".

Clause 9 Delete the clause and substitute therefor the following –

"Consent to processing.

9. - (1) Any consent required to be given by a data subject to the processing of personal data -

(a) means any informed, specific, unequivocal, freely given, expression of will by which the data subject agrees to the processing of that data subject's personal data;

(b) includes any such expression of consent given by –

(i) the legal personal representative of the data subject;

(ii) any individual to whom the data subject delegates, in writing in such form and manner as may be prescribed, the right to give or withhold consent to the processing;

(iii) in the case of a minor, subject to section 5(a)(i), a parent or legal guardian of the minor; or

(iv) in the case of an individual who by reason of any mental impairment is unable to act, the person entitled to act for that individual under section 5(a)(ii); and

(c) may be withdrawn in the same manner in which it may be given under paragraph (a).

(2) For the purposes of subsection (1) –

(a) "informed" with reference to the giving of consent means that at the time in question the data subject is informed about how the personal data will be processed, including the purpose for which the data will be used and the class of persons to whom the personal data may be transferred; and

(b) consent is not freely given if the data subject is required, as a condition for the provision of any goods or services to the data subject, to consent to the collection, use or disclosure of the data subject's personal data beyond what is reasonable for the provision of those goods or services.".

Clauses 10 and 11

1. Delete clause 11, re-number clause 10 as clause 11, and insert the following as clause 10 –

"Consent required for direct marketing.

10. - (1) A data controller shall not process personal data of a data subject for the purpose of direct marketing unless the data subject –

(a) consents to the processing for that purpose; or

(b) is, subject to subsection (4), a

customer of the data controller.

(2) A data controller shall not approach the data subject, whose consent is required in terms of subsection (1)(a), more than once in order to request that consent.

(3) A request for consent in terms of subsection (1)(a) shall be made in the prescribed form and manner.

(4) A data controller may, pursuant to subsection (1)(b), only process the personal data of a data subject who is a customer of that data controller –

(a) if the data controller has obtained the contact details of the data subject in the context of the sale of any goods or services;

(b) for the purpose of direct marketing of the responsible party's own similar goods or services; and

(c) if the data subject has been given a reasonable opportunity to object, free of charge and in a manner free of unnecessary formality, to such use of that data subject's personal data –

(i) at the time the personal data was collected; and

(ii) on the occasion of each communication with the data

subject for the purpose of direct marketing if the data subject has not refused such use.

(5) Any communication to a data subject for the purpose of direct marketing shall contain –

(a) the details of the identity of the sender or the person on whose behalf the communication has been sent; and

(b) an address or other contact details to which the recipient may send a request that such communication cease.

(6) In this Act, "direct marketing" means to approach a data subject in person or by any means of communication (whether electronic or otherwise) for the direct or indirect purpose of –

(a) promoting or offering to supply, in the ordinary course of business, any goods or services; or

(b) requesting a donation of any kind for any reason.".

2. In clause 11 (as re-numbered) –

(a) in the marginal note, delete the words "likely to cause damage or distress";

(b) in subsection (2)(a), (b) and (c), delete the words "the data" wherever they appear and substitute therefor in each case the words "the personal data";

(c) in subsection (2)(d), delete the words "the data has" and substitute therefor the words "the personal data has";

(d) in subsection (3)(b), delete the numerals "76(3)" and substitute therefor the numerals "74(3)(b)".

Clause 12

In subsection (3)(b), delete the word "twenty-one" and substitute therefor the word "thirty".

Clause 13

1. In subsection (1), delete the words "any data" and substitute therefor the words "any personal data".

2. In subsections (3)(a), (3)(b)(ii) and (4), delete the words "the data" wherever they appear and substitute therefor in each case the words "the personal data".

3. In subsection (5)(b), delete the words "of the data" and substitute therefor the words "of the personal data".

Clause 15

Delete subsections (2) and (3) and insert the following as subsection (2) –

" (2) Subsection (1) does not apply to –

(a) processing; or

(b) data controllers,

of a particular description specified by the Minister, after consultation with the Commissioner, for the purposes of this section by order published in the *Gazette* and subject to affirmative resolution, being processing which it appears to the Minister is unlikely to prejudice the rights and freedoms of data subjects.".

Clause 16

1. In subsections (1)(c)(ii) and (2)(e), insert immediately before the word "data" the word "personal".

2. In subsection (2)(f), delete the words "disclose the data" and substitute therefor the words "disclose the personal data".

3. In subsection (2)(g), delete the words "transfer, the data" and substitute therefor the words "transfer, the personal data".

Clause 18

Delete subsection (3) and substitute therefor the following –

" (3) A person who commits an offence under subsection (1) shall be liable upon summary conviction before a Parish Court, to a fine not exceeding two million dollars or to imprisonment for a term not exceeding six months.".

Clause 19

1. In subsection (1), delete the numerals "76(3)" and substitute therefor the numerals "74(3)(c)".

2. In subsection (5), delete the words "processes data" and substitute therefor the words "processes personal data".

Clause 20

1. In subsection (1), insert next after the words "A data controller" the words "falling within subsection (6)".

2. Insert the following as subsection (6) –

" (6) A data controller falls within this subsection if the data controller –

(a) is a public authority;

(b) processes or intends to process sensitive personal data

or data relating to criminal convictions;

(c) processes personal data on a large scale; or

(d) falls within a class prescribed by the Commissioner by notice published in the *Gazette* as being a class of data controllers to whom subsection (1) applies,

but a data controller who processes personal data only for the purpose of a public register or which is a non-profit organisation established for political, philosophical, religious or trade union purposes, does not fall within this subsection.".

Clause 21

1. In subsection (2), insert next after the words "this Part" the words ", or fails to make a report or notification required under subsection (3) or (5),".

2. Delete subsection (3) and substitute therefor the following –

" (3) The data controller shall report to the Commissioner, in such form and manner as shall be prescribed –

(a) any contravention of the data protection standards; and

(b) any security breach in respect of the data controller's operations which affects or may affect personal data,

within seventy-two hours after becoming aware of the contravention or security breach (as the case may be).".

3. In subsection (4), insert next after the words "type and number of" the word "personal".

4. In subsection (5) –

(a) delete the words "is likely to affect a data subject, the data

controller shall without undue delay notify the data subject of" and substitute therefor the words "occurs, the data controller shall upon becoming aware of, or having reason to become aware of, the contravention or breach, notify each data subject, whose personal data is affected by the breach, of";

(b) delete the full stop at the end of paragraph (c), substitute therefor a comma, and insert next after paragraph (c), back to the margin of the subsection, the words "in such form and manner, and within such time, as shall be prescribed."

5. In subsection (6)(a), delete the numerals "46" and substitute therefor the numerals "44".

Clause 22

1. In subsection (3), delete the words "data are deemed" and substitute therefor the words "personal data are deemed".

2. In subsection (4)(a), delete the words "data is" and substitute therefor the words "personal data are";

3. In subsection (4)(b), delete the words "data obtained" and substitute therefor the words "personal data obtained".

4. In subsection (5)(a)(i), insert next after the words "(whichever occurs first) the" the word "personal".

5. In subsection (6)(d), (e), (g) and (h) insert immediately before the word "data" in each case the word "personal".

6. In subsection (6)(f) –

(a) delete the words "of the data" and substitute therefor the words "of the personal data";

(b) delete the words "providing the data" and substitute therefor the words "providing the personal data".

7. In subsection (6)(i), delete the words "the data are" and substitute therefor the words "the personal data are".

8. In subsection (7), delete the words "in the data, or the disclosure of the data" and substitute therefor the words "in the personal data, or the disclosure of the personal data".

Clause 23

1. In subsection (1), delete the numerals "10" and substitute therefor the numerals "11".

2. In subsection (1)(a), delete the words "has given his consent to the processing" and substitute therefor the words "consents to the processing and has not withdrawn that consent".

3. In subsection (1)(e)(ii), delete the words "on any person".

4. In subsection (1)(e), insert the word "or" at the end of sub-paragraph (ii), delete sub-paragraph (iii) and re-number sub-paragraph (iv) as sub-paragraph (iii).

5. In subsection (1)(e)(iii) (as re-numbered), delete the words "by any person".

6. In subsection (1)(f), delete the words "the data are" and substitute therefor the words "the personal data are".

7. In subsection (1)(g), insert next after the words "published the" the word "personal".

Clause 24

1. In subsection (1)(a), (d)(iv), (e) and (k), in each case insert the word "sensitive" immediately before the word "personal".

2. In subsection (1)(g) –

(a) insert the word "or" at the end of sub-paragraph (i);

(b) delete the word "or" at the end of sub-paragraph (ii); and

(c) delete sub-paragraph (iii).

3. In subsections (1)(k), (3) and (4), delete the numerals "76(3)" and substitute therefor in each case the numerals "74(3)(e)".

4. In subsection (5), delete the numerals "76(3)" and substitute therefor the numerals "74(3)(f)".

Clause 25 — In subsection (2), insert next after the words "for which" the word "personal".

Clause 26 — Delete the words "not excessive, in relation to the purpose" and substitute therefor the words "limited to what is necessary for the purposes".

Clause 27 — 1. In subsection (2)(a), insert next after the words "for which the" and the words "accuracy of the", in each case, the word "personal".

2. In subsection (2)(b), delete the words "data are inaccurate, the data" and substitute therefor the words "personal data are inaccurate, the personal data".

Clause 28 — 1. Insert next after the words "disposal of" in subsection (1)(b) and "access to" in subsection (2), in each case, the word "personal".

2. In subsection (1)(b), delete the numerals "76" and substitute therefor the numerals "74".

Clause 29 — Delete subsection (2)(b) and (c) and substitute therefor the following –

" (b) contravenes section 10 by processing personal data for

purposes of direct marketing without the consent required under subsection (1) of that section;

(c) contravenes section 11 by failing to comply with a notice given under subsection (1) of that section to the extent that the notice is justified, or by failing to give a written statement under subsection (4) of that section; or".

Clause 30

1. In subsection (2)(b), insert next after the words "nature of the" the word "personal".

2. Insert next after subsection (5) the following subsections –

" (6) For the purposes of subsection (1)(a), the technical and organisational measures include –

(a) pseudonymisation and encryption of personal data;

(b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

(c) the ability to restore the availability of, and access to, personal data in a timely manner in the event of a physical or technical incident;

(d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing; and

(e) measures to ensure adherence to the technical and organisational requirements specified in the other provisions of this Act.

(7) A person who, wilfully and without lawful authority, uses any means to breach any pseudonymisation or encryption

applied to any personal data commits an offence and shall be liable upon conviction for that offence before –

(a) a Parish Court, to a fine not exceeding two million dollars; or

(b) a Circuit Court, to a fine.

(8) A person does not commit an offence under subsection (7) if –

(a) the breach is –

(i) necessary for the prevention, detection or investigation of crime;

(ii) required or authorised by a court or by or under any law;

(iii) justifiable in the public interest;

(iv) justifiable for the purposes of journalism, literature or art; or

(v) justifiable in the public interest with a view to testing the effectiveness of the technical and organisational measures referred to in subsection (1)(a) and the person –

(A) acted without intending to cause, or threaten to cause, damage or distress to a person; and

(B) without undue delay and, where feasible, within seventy-two hours after the breach, notified the Commissioner, or a data controller concerned, of the breach; or

(b) the person acted in the reasonable belief that –

(i) the person is a data subject in respect of the personal data concerned; or

(ii) the person is the data controller in respect of the peresonal data or acted with the consent of that data controller.".

Clause 31

1. In subsections (2)(b), (d) and (h) and (4)(g), delete the words "the data" and substitute therefor in each case the words "the personal data".

2. In subsection (4)(h), delete the word "which" and substitute therefor the words "(which may include contractual terms) that".

3. In subsection (4), delete the full stop appearing at the end of sub-paragraph (i) and substitute therefor a semi-colon, and insert the following as sub-paragraph (j) –

" (j) the transfer is necessary for the purposes of national security or the prevention, detection or investigation of crime.".

4. In subsection (7)(a), delete the words "data protection" and substitute therefor the words "the protection of personal data".

Clause 32

1. Delete subsection (1) and re-number subsections (2) and (3) as subsections (1) and (2).

2. In subsection (2) (as re-numbered), insert next after the words "references to" the word "personal".

Clause 33

In subsection (1)(c), delete the numerals "63" and substitute therefor

the numerals "61".

Clause 34

1. In subsection (1)(a), delete the words "and detection" and substitute therefor the words ", detection or investigation".

2. In subsection (1), insert next after the words "provisions to the" the word "personal".

3. In subsection (4)(a)(ii), delete the words "or detection" and substitute therefor the words ", detection or investigation".

Clause 35

Delete the clause and re-number the remaining clauses accordingly (and references hereinafter in this List of Amendments to clauses 36 to 39 mean those clauses before they are re-numbered pursuant to this amendment).

Clause 36

In subsection (2)(a), insert the word "or" at the end of sub-paragraph (i), delete sub-paragraph (ii), and re-number sub-paragraph (iii) as sub-paragraph (ii).

Clause 37

1. In subsection (1)(a), insert next after the words " with a view to" the words ", or consists of,".

2. In subsection (1) (b), insert next after the words "freedom of expression" the words "or the right to seek, receive, distribute or disseminate information, opinions and ideas through any media".

3. In subsection (2)(c), delete the numerals "10" and substitute therefor the numerals "11".

4. In subsection (4), delete the numerals "10" and substitute therefor the numerals "11".

5. In subsection (5)(a) –

(a) delete the numerals "52" and substitute therefor the numerals "50"; and

(b) insert next after the words "with respect to the" the word "personal".

Clause 38

1. In subsection (1), insert next after the words "are that the" the word "personal".

2. In subsection (5), insert next after the words "because the" the word "personal".

3. In subsection (6)(a) and (b), delete the words "data is" and substitute therefor in each case the words "personal data are".

4. In subsection (7)(a), delete the words "data relates" and substitute therefor the words "personal data relate".

5. In subsection (7)(b), delete the words "data is" and substitute therefor in each case the words "personal data are".

Clause 39

Delete the clause and re-number the remaining clauses accordingly, (and, unless otherwise specified, references hereinafter in this List of Amendments to clauses 42 to 76 mean those clauses before they are re-numbered pursuant to this amendment).

Clause 42

In paragraph (d), delete the numerals "10" and substitute therefor the numerals "11".

Clause 46

1. In subsection (2)(c), insert next after the word "processing" the word "personal".

2. In subsection (4) –

(a) insert next after the word "inaccurate" wherever it appears in paragraphs (a) and (b) the word "personal";

(b) insert next after the words "any other" wherever they appear in paragraphs (a) and (b) the word "personal";

(c) in paragraph (b), insert next after the words "in the case of" the word "personal"; and

(d) in paragraph (b)(ii), insert immediately before the word "data", wherever it appears, the word "personal".

3. In subsection (5), insert next after the words "to whom the" the word "personal".

4. In subsection (7)(b), delete the numerals "55" and substitute therefor the numerals "53".

5. In subsection (11), delete the numerals "53" and substitute therefor the numerals "51".

Clause 47

1. In subsection (1) –

(a) delete the words "A data controller" and substitute therefor the words "Unless otherwise specified in a notice under subsection (4), a data controller"; and

(b) insert next after the words "in respect of all" the word "personal".

2. Insert next after subsection (2) the following subsections –

" (3) The data protection impact assessment form prescribed under subsection (1) shall require at least the following information –

(a) a detailed description of the envisaged processing of

the personal data and the purposes of the processing, specifying, where applicable, the legitimate interest pursued by the data controller;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the purposes;

(c) an assessment of the risks to the rights and freedoms, of data subjects, referred to in subsection (5); and

(d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Act, taking into account the rights and legitimate interests of data subjects and other persons concerned.

(4) The Commissioner may publish a notice in the *Gazette*, and in such other manner as the Commissioner considers appropriate to bring the notice to the attention of data controllers, specifying the classes or kinds of personal data, or data controllers, to which subsection (1) shall apply or shall not apply.

(5) In determining any class or kind for the purposes of subsection (4), the Commissioner shall have regard to the likely level of risk to the rights and freedoms of data subjects involved in processing the data concerned, taking into account the nature, scope, context and purposes of the processing.".

Clause 49

1. In subsection (4)(b), delete the numerals "55" and substitute therefor the numerals "53".

2. Insert next after subsection (5) the following subsections –

" (6) The Commissioner shall issue a code of practice as to the manner in which the Commissioner's functions under this section are to be exercised, and the code shall –

(a) specify the factors to be considered in determining whether to serve an assessment notice on a data controller;

(b) specify descriptions of documents and information that –

(i) are not to be examined or inspected in pursuance of an assessment notice; or

(ii) are to be examined or inspected, in pursuance of an assessment notice, only by persons of a description specified in the code,

and in particular as concerns documents and information concerning an individual's physical or mental health or the provision of social care for an individual;

(c) describe the nature of inspections and examinations that may be carried out in pursuance of an assessment notice; and

(d) set out the procedure for preparing, issuing and publishing assessment reports by the Commissioner in respect of data controllers who are served with assessment notices.

(7) For the purposes of –

(a) subsection (6)(b), "social care" includes all forms of personal care and other practical assistance provided for individuals who by reason of financial need, age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of

such care or other assistance;

(b) subsection (6)(d), an assessment report is a report that contains –

(i) a determination as to whether a data controller has complied, or is complying with, the data protection standards;

(ii) recommendations as to any steps that the data controller ought to take, or to refrain from taking, to ensure compliance with any of the data protection standards; and

(iii) such other matters as are specified in the code.".

Clause 50

1. In subsection (1), delete the numerals "49" and substitute therefor the numerals "47".

2. In subsection (4), delete the numerals "49" and substitute therefor the numerals "47".

Clause 51

1. In subsection (1) –

(a) in paragraph (a), delete the numerals "48" and substitute therefor the numerals "46"; and

(b) in paragraph (c), delete the numerals "37" and substitute therefor the numerals "36".

2. In subsection (3) –

(a) in paragraph (b)(i), delete the numerals "48" and substitute therefor the numerals "46";

(b) in paragraph (c), delete the numerals "55" and substitute therefor the numerals "53".

3. In subsection (7), delete the numerals "54" and substitute therefor the numerals "52".

4. In subsection (10), delete the numerals "53" and substitute therefor the numerals "51".

Clause 52 — In subsection (2)(b), delete the numerals "55" and substitute therefor the numerals "53".

Clause 53 — In subsections (1)(a) and (3), delete the words "52(1) with respect to those" and substitute therefor in each case the words "50(1) with respect to those personal".

Clause 54 — In subsection (4), delete the words "five hundred thousand" and substitute therefor the words "one million".

Clause 55 — 1. In subsection (2), delete the numerals "46" and substitute therefor the numerals "44".

2. In subsection (3), delete the words "46(9), 50(2) or 51(3)(d)" and substitute therefor the words "44(9), 48(2) or 49(3)(d)".

3. In subsection (4), delete the numerals "52" and substitute therefor the numerals "50".

Clause 56 — In subsections (1), (2), (3) (4) and (5) delete the numerals "55" wherever they appear and substitute therefor, in each case, the numerals "53".

Clause 58 — 1. In the marginal note, delete the words "codes of practice" and substitute therefor the word "guidelines".

2. In subsection (3) –

(a) delete the words "a code of practice" and substitute therefor the word "guidelines";

(b) delete the words "(mandatory codes)"; and

(c) delete the words "the code" and substitute therefor the words "the guidelines".

Clause 59

1. In subsection (2), re-number paragraphs (b) and (c) as paragraphs (c) and (d) and insert the following as paragraph (b) –

"(b) persons who appear to the Commissioner to represent the interests of data controllers;".

2. In subsection (3), delete the words "the data" wherever they appear and substitute therefor in each case the words "the personal data".

Clause 61

1. In subsection (1)(a), delete the numerals "10" and substitute therefor the numerals "11".

2. Insert next after subsection (5) the following subsection –

" (6) The Commissioner may intervene as a party in any proceedings referred to in subsection (1).".

Clause 63

1. In subsection (1), insert next after the word "controller" the word "concerned".

2. Delete sub-paragraph (i) of subsection (2)(a).

3. In subsection (2)(b), insert next after the words "disclose the" the word "personal".

4. In subsections (4) and (5), insert next after the words "obtains the" wherever they appear the word "personal".

5. In subsection (6), insert next after the words "sell the" the word "personal".

6. In subsection (9), delete the words "or 39 (manual data)".

Clause 64

1. In subsection (1) –

(a) delete the words "is satisfied" and substitute therefor the words "has reason to believe";

(b) delete paragraph (a) and substitute therefor the following –

" (a) the data controller has committed an offence to which this section applies;".

2. In subsection (3)(a), delete the words "21(1) (duty of controller to comply with standards) or section 16(5)" and substitute therefor the words "21(2) (failure of controller to comply with standards or to make a required report or notification) or section 16(7)".

3. In subsections (5), (6) and (9)(b)(i), delete the word "fifteen" and substitute therefor in each case the word "thirty".

4. In subsection (9) –

(a) delete the word "and" at the end of sub-paragraph (a); and

(b) delete the full stop at the end of paragraph (b)(ii) and substitute therefor the word "; and", and insert next thereafter the following paragraph –

" (c) require the data controller, in the event that the fixed penalty is not paid within the period

specified pursuant to paragraph (b), to attend before the court having jurisdiction to try the offence to answer the charge on such date as may be specified, being a date not earlier than ten days after the expiration of the period specified pursuant to paragraph (b), and that requirement shall constitute a summons for the data controller to attend court to answer the charge if the fixed penalty is not paid within the period specified pursuant to paragraph (b).".

Clause 65 In subsection (5) (a), delete the words "falling within paragraph (d)(ii) of the definition of "data" in section 2" and substitute therefor the words "that is recorded information held by a public authority other than by means which enable the data to be processed automatically, or to be structured either by reference to individuals or criteria relating to individuals so that specific information relating to a particular individual is readily available".

Clause 67 Delete all the words, except for the marginal note, and substitute for the deleted words the following –

" 65. (1) A person shall disclose to the Commissioner or the Appeal Tribunal referred to in section 70, as the case may require, any information required by the Commissioner or Appeal Tribunal (as the case may be) for the discharge of functions under this Act, unless precluded from such disclosure under any enactment or rule of law.

(2) Nothing in subsection (1) shall be construed as requiring an individual to disclose –

(a) anything that tends to incriminate that individual; or

(b) any information protected from disclosure by legal professional privilege.".

Clause 69

In subsection (2)

(a) delete from paragraph (a) the numerals "63" and "65" and substitute therefor the numerals "61" and "63"; and

(b) delete from paragraph (b) the numerals "54" and substitute therefor the numerals "52".

Clause 70

Delete subsection (1) and substitute therefor the following –

" (1) Notwithstanding any other penalty specified in this Act, where a body corporate commits an offence under this Act, the body corporate shall be liable to a fine not exceeding four percent of the annual gross worldwide turnover of that body corporate for the preceding year of assessment in accordance with the Income Tax Act.".

Clause 75

1. In subsection (1), delete the numerals "42" and substitute therefor the numerals "40".

2. In subsection (2), insert next after the words "in respect of those" the word "personal".

Clause 76

1. In subsection (1)(b), delete the words "or transitional provisions or savings" and substitute therefor the words ", transitional or savings provisions".

2. In subsection (3)(b), delete the numerals "10" and substitute therefor the numerals "11".

3. In subsection (3)(b), (e) and (f), insert immediately before the word "data" in each case the word "personal".

4. Re-number paragraphs (d) to (j) as paragraphs (e) to (k) and insert the following as paragraph (d) –

" (d) regulations under section 22(7) prescribing additional circumstances in which a data controller is not obliged to disclose to a data subject the information referred to in section 22(4);".

5. In subsection (3)(i) (as re-numbered), delete the numerals "64" and substitute therefor the numerals "62".

6. In subsection (3)(j) (as re-numbered), delete the numerals "65" and substitute therefor the numerals "63".

New clause 75

Insert next after clause 76 (clause 74 as re-numbered) the following as clause 75 and re-number the remaining clauses accordingly (and references hereinafter in this List of Amendments to clause 77 mean clause 77 before it is re-numbered pursuant to this amendment) –

"Amend-ment of monetary and fixed penalties.

75. The Minister may by order subject to affirmative resolution amend any monetary penalty or fixed penalty imposed by this Act.".

Clause 77

1. In subsection (1), delete the words "one year from the date of commencement of this Act" and substitute therefor the words "two years from the earliest day appointed under section 1(1)".

2. In subsection (2), delete the words "data processing" and substitute therefor the words "processing, of personal data,".

3. Insert the following as subsection (3) –

" (3) Personal data that is recorded information held other than by means which enable the data to be processed automatically, or to be structured either by reference to individuals or criteria relating to individuals so that specific information relating to a particular individual is readily available, are, until the expiration of two years from the earliest day appointed under section 1(1), exempt from –

(a) the first, second, third, fifth, seventh and eighth data protection standards;

(b) the sixth data protection standard, except so far as that standard relates to the rights conferred on data subjects by sections 6 and 13;

(c) sections 10, 11 and 12;

(d) Part III;

(e) section 61 (unlawfully obtaining, *etc*. personal data); and

(f) section 69 (liability for damage), except so far as it relates to damage caused by a contravention of section 6 (rights of access to personal data) or of the fourth data protection standard, and to any distress which is also suffered by reason of that contravention.".

New clause 77 — Insert next after clause 77 (clause 76 as re-numbered) the following as clause 77 –

"Review of Act. 77. This Act shall be reviewed every five years from the earliest day appointed under section 1(1).".

First Schedule. 1. Insert immediately before the heading "*The Commissioner*" the

heading "Part I".

2. In paragraph 1, delete the word "an" and substitute therefor the words "a person having expertise in the area of information communication technology, data protection or privacy rights, or other like skills, to be the".

3. In paragraph 2(1), delete the word "five" and substitute therefor the word "seven".

4. Delete paragraph 2(4) and substitute therefor the following –

" (4) The Commissioner shall in any case vacate the office on completing fourteen years of service as Commissioner.".

5. In paragraph 2(6), delete the full stop at the end of sub-paragraph (b) and substitute therefor a comma, and insert, back to the margin of sub-paragraph (6), the words "or for any other cause".

6. In paragraph 2, re-number sub-paragraph (7) as sub-paragraph (12) and insert next after sub-paragraph (6) the following sub-paragraphs –

" (7) Where advice is given to the Governor-General pursuant to sub-paragraph (6), the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, shall appoint a tribunal which shall consist of a chairperson and not less than two other members selected from among persons who hold or have held office as a Judge of a court having unlimited jurisdiction in civil and criminal matters in the Commonwealth.

(8) The tribunal appointed under sub-paragraph (7) shall enquire into the matter and report on the facts thereof to the Governor-General and advise the Governor-General as to whether the Commissioner ought to be removed from office in accordance with this paragraph.

(9) The provisions of sections 8 to 16 of the Commissions of Enquiry Act shall apply, with the necessary modifications, in relation to a tribunal appointed under sub-paragraph (7) or, as the context may require, to the members thereof, as they apply in relation to Commissions or commissioners appointed under that Act.

(10) Where the question of removal of the Commissioner from office has been referred to a tribunal appointed under sub-paragraph (7), and the tribunal has advised the Governor-General that the Commissioner ought to be removed from office, the Governor-General shall by instrument in writing remove the Commissioner from office.

(11) Where the question of removal of the Commissioner has been referred to a tribunal under sub-paragraph (7), the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, may suspend the Commissioner from performing any function relating to the office, and any such suspension may at any time be revoked by the Governor-General and shall cease to have effect if the tribunal advises the Governor-General that the Commissioner ought not to be removed from office.".

7. Insert next after paragraph 7 the following as Part II of the Schedule –

" PART II

Data Protection Oversight Committee

1. - (1) There is hereby established a Data Protection Oversight Committee (in this Act referred to as the Committee).

(2) The objective of the Committee shall be to hold the Information Commissioner accountable to the public in the performance of the Commissioner's functions under this Act.

(3) The Committee shall consist of the following persons appointed as members by the Governor-General, upon the recommendation of the Prime Minister after consultation with the Leader of the Opposition –

(a) a retired Judge of the Supreme Court;

(b) an attorney-at-law having expertise in the area of data protection or privacy rights;

(c) a person representing the interests of data subjects;

(d) a person representing the interests of data controllers; and

(e) three other persons having expertise in any one or more of the following areas –

(i) information communication technology;

(ii) finance;

(iii) governance and public administration.

(4) The following persons shall not be eligible to be appointed as members of the Committee –

(a) a member of –

(i) either House of Parliament; or

(ii) the Council of a Municipal Corporation, City Municipality or Town Municipality;

(b) a bankrupt within the meaning of the Insolvency Act; or

(c) a person who has been convicted of an offence involving dishonesty or moral turpitude.

(5) A person shall be eligible to be appointed as a member of the Committee if that person is a person of integrity, capable of exercising competence, diligence, sound judgment, and impartiality, in fulfilling that person's functions as a member of the Committee pursuant to the provisions of this Act.

(6) Subject to sub-paragraph (7) and paragraphs 7 and 8, a person appointed under sub-paragraph (3) shall serve as a member of the Committee for a period of three years and is eligible to be re-appointed for one further period of three years.

(7) A person shall not continue to be a member of the Committee, and shall not be eligible to be re-appointed as a member of the Committee if any circumstances exist which render that person no longer eligible to be appointed as described in sub-paragraphs (4) and (5).

2. The functions of the Committee shall be to –

(a) monitor and review the performance of the

functions of the Information Commissioner;

(b) report to both Houses of Parliament on any matter relating to the performance of the functions of the Information Commissioner;

(c) review the reports laid before Parliament under section 58 and make recommendations thereon to both Houses of Parliament, in the report referred to in paragraph (b); and

(d) perform such other functions as may be necessary for promoting the objective of the Committee under paragraph 1(2).

3. The Committee –

(a) may investigate any aspect of the operations of the Information Commissioner, or any conduct of the Information Commissioner, or any employee of the office of the Information Commissioner in relation to their functions under this Act;

(b) is entitled to take copies of any document in relation to any matter under investigation by the Committee;

(c) may require the Information Commissioner to supply information, or provide documents, in respect of any matter relating to the operations of the office of the Information Commissioner or the conduct of any employee in relation to their functions under this Act; and

(d) for the purposes of an investigation under sub-paragraph (a), shall have the powers, protections and immunities conferred upon a Commission under the Commissions of Enquiry Act, and the provisions of that Act shall apply to any person summoned by or

appearing before the Committee in the same manner as it applies to a person summoned or appearing before a Commission of Enquiry.

4. The Governor-General shall cause the names of the members of the Committee, and any change in membership of the Committee, to be published by notice in the *Gazette*.

5. The members of the Committee shall elect one of their number to be the chairperson of the Committee.

6. The Committee shall appoint a secretary whose duties shall be to –

(a) attend the meetings of the Committee;

(b) record minutes of the proceedings of the Committee and keep the minutes in proper form; and

(c) perform such other duties connected with the work of the Committee as the Committee may require.

7. A member of the Committee shall be removed from office by the Governor-General, on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, if that member –

(a) is absent, without reasonable excuse, from three consecutive meetings of the Committee without the leave of –

(i) the Governor-General, in the case of the chairperson;

(ii) the chairperson, in the case of any member other than the chairperson;

(b) becomes incapable of satisfactorily discharging the functions of member; or

(c) has a mental disorder within the meaning of the Mental Health Act.

8. A member of the Committee may resign office by giving written notice of the resignation to –

(a) the Governor-General, in the case of the chairperson; or

(b) the chairperson, in the case of any member other than the chairperson.

9. Documents made by, or decisions of, the Committee may be signed under the hand of the chairperson, or any member of the Committee authorised to act in that behalf.

10. - (1) The Committee shall meet as often as it considers necessary for the proper conduct of its affairs, but shall in any event meet not less than once per month.

(2) The chairperson, or any member elected by the Committee to act temporarily as chairperson, shall preside at a meeting of the Committee.

(3) A quorum of the Committee shall be four.

(4) Decisions of the Committee shall be by a majority of votes of the members, and the chairperson shall have a casting vote in addition to an original vote, in any case where the voting is equal.

(5) Proper records of all proceedings of the

Committee shall be kept.

11. No action, suit, prosecution, or other proceedings, shall be brought or instituted personally against any member of the Committee in respect of any act done or omission made *bona fide* in pursuance of the provisions of this Act.

12. A member of the Committee who has any interest, directly, or indirectly, in any matter before the Committee shall –

(a) as soon as possible as the relevant facts have come to the knowledge of that member, disclose the nature of the interest at a meeting of the Committee; and

(b) be absent during the deliberations of the Committee, and not take any part in its decision, with respect thereto.

13. There shall be paid to the Committee from the funds of the Information Commissioner, such remuneration, whether by way of honorarium, salary or fees, such allowances as the Minister responsible for the public service may determine.

14. The Commissioner shall provide to the Committee such resources as the Committee reasonably requires for the discharge of its functions.".

8. In the Appendix –

(a) delete paragraph 2(3)(a) and (b) and substitute therefor the following –

"(a) retires –

(i) on or after completing one term of service as Commissioner; or

(ii) by reason of ill health prior to such completion; or

(b) has a minimum of seven years service.";

(b) delete paragraph 4 and re-number the remaining paragraphs accordingly;

(c) in paragraphs 5(1) and 9 (as re-numbered), delete the numeral "5" and substitute therefor in each case the numeral "4";

(d) in paragraph 8(5) (as re-numbered), delete the numeral "7" and substitute therefor the numeral "6".

Second Schedule

1. In the heading, delete the numerals "44" and substitute therefor the numerals "42".

2. In paragraph 6(1) –

(a) in sub-paragraphs (a) and (b), insert immediately before the words "data are" in each case the word "personal";

(b) in sub-paragraph (a)(i) and (ii), insert immediately before the words "data could" in each case the word "personal".

3. In paragraph 8(3), insert immediately before the word "data" wherever it appears the word "personal".

4. In paragraph 10, insert immediately before the words "data consist" the word "personal".

5. In paragraph 12, delete the word "Data" and substitute therefor

the words "Personal data".

Third Schedule.

1. In the heading, delete the numerals "57" and substitute therefor the numerals "55".

2. In paragraph 1(5), delete the words "52 (determination by Commissioner as to the special purposes) with respect to those data" and substitute therefor the words "50 (determination by Commissioner as to the special purposes) with respect to those personal data".

3. In paragraph 2(5), delete the word "Anything" and substitute therefor the words "Subject to sub-paragraph (6), anything".

4. Insert next after paragraph 2(5) the following sub-paragraph –

" (6) A Judge of a Parish Court may direct the release of anything seized under this Act if the Judge is satisfied, on the application of the person from whom the thing is seized, that the thing does not fall within paragraph 1(6)(d) or its retention is no longer necessary for the purposes of that sub-paragraph.".

Fourth Schedule.

In the heading, delete the numerals "65" and substitute therefor the numerals "63".

Fifth Schedule.

1. In the heading, delete the numerals "72" and substitute therefor the numerals "70".

2. In paragraph 1 –

(a) delete from sub-paragraph (1) the numeral "(2)" and substitute therefor the numeral "(3)"; and

(b) re-number sub-paragraph (2) as sub-paragraph (3) and insert the following as sub-paragraph (2) –

" (2) The members appointed under sub-paragraph (1), other than the chairperson, shall be persons having expertise in the field of data protection or privacy rights.".

SIGNATURES

Hon. Fayval Williams – **Chairman**

Mrs. Marisa Dalrymple Philibert

Mrs. Juliet Cuthbert Flynn

Mr. Franklin Witter

Mr. Julian Robinson

Mr. Mark Golding

Dr. Andrew Wheatley

Senator Robert Nesta Morgan

Senator Matthew Samuda

Senator Kerensia Morrison

Senator Sophia Frazer-Binns

Senator Donna Scott Mottley